SixTen and Associates
Mandate Reimbursement Services

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June 10, 2003

RECEIVED
JUN 1 0 2003
COMMISSION ON STATE MANDATES

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: TEST CLAIM OF Santa Monica Community College District
Statutes of 2000 / Chapter 124
Employment of College Faculty and Administrators

Dear Ms. Higashi:

Enclosed are the original and seven copies of the Santa Monica Community College District test claim for the above referenced mandate.

I have been appointed by the District as it's representative for the test claim. The District requests that all correspondence originating from your office and documents subject to service by other parties be directed to me, with copies to:

Thomas J. Donner
Executive Vice President, Business and Administration
Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, CA 90405-1628

The Commission regulations provide for an informal conference of the interested parties within thirty days.

If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Keith B. Petersen

C: Tom Donner, Executive Vice President,
Business and Administration
Santa Monica Community College District

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)

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COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 02-TC-27

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Keith B. Petersen, President
SixTen and Associates

Telephone Number

Voice: 858-514-8605
Fax: 858-514-8645

Claimant Address

Santa Monica Community College District
1900 Pico Boulevard
Santa Monica, California 90405-1628

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Employment of College Faculty and Administrators

(See Attached)

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Tom Donner
Executive Vice President - Business and Administration

Telephone No.

(310) 434-4221

Signature of Authorized Representative

X Tom Donner

Date

June 4th, 2003

Attachment to COSM Form CSM 2 (1/91)
Test Claim of Santa Monica Community College District
Chapter 124, Statutes of 2000
Employment of College Faculty and Admnistrators

Chapter 124, Statutes of 2000
Chapter 1023, Statutes of 1998
Chapter 758, Statutes of 1995
Chapter 506, Statutes of 1993
Chapter 1302, Statutes of 1990
Chapter 973, Statutes of 1988
Chapter 470, Statutes of 1981

Education Code Section 70901
Education Code Section 87356
Education Code Section 87357
Education Code Section 87358
Education Code Section 87359
Education Code Section 87360
Education Code Section 87610.1
Education Code Section 87611
Education Code Section 87663
Education Code Section 87714
Education Code Section 87740
Education Code Section 87743.2
Education Code Section 87743.3
Education Code Section 87743.4
Education Code Section 87743.5

Title 5, California Code of Regulations
Section 53130
Section 53403
Section 53406
Section 53407
Section 53410
Section 53410.1
Section 53412
Section 53414
Section 53415
Section 53416
Section 53417
Section 53420
Section 53430

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (619) 514-8605
Fax: (619) 514-8645

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of Santa Monica Community College District, Test Claimant.	No. CSM. _____ Chapter 124, Statutes of 2000 Chapter 1023, Statutes of 1998 Chapter 758, Statutes of 1995 Chapter 506, Statutes of 1993 Chapter 1302, Statutes of 1990 Chapter 973, Statutes of 1988 Chapter 470, Statutes of 1981 Education Code Sections 70901, **87356** 87357, 87358, 87359, 87360, 87360.1, 87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, and 87743.5 Title 5, California Code of Regulation Sections 53130, 53403, 53406, 53407,53410, 53410.1, 53412, 53414, 53415, 53416, 53417, 53420 and 53430 Employment of College Faculty and Administrators

TEST CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government

Code section 17551 (a) to ". . . hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Santa Monica Community College District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for community college districts to: establish the minimum conditions for the employment of academic employees; evaluate whether academic employment candidates meet the minimum qualifications or equivalencies; consult with the academic senate regarding standards of academic employment; contract annually with non-tenure academic employees; arbitrate tenure grievances; evaluate academic employees at specified intervals; and, establish "faculty service areas" and classify all academic employees within their appropriate service areas.

SECTION 1. LEGISLATIVE HISTORY PRIOR TO DECEMBER 31, 1974

Education Code Section 13345[2] provided that the Article governed the

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[1] Government Code section 17519, as last amended by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

[2] Education Code Section 13345, as added by Chapter 1654, Statutes of 1971, Section 1:

"The provisions of this article govern the employment of persons by a district to

1 employment of persons by a district to serve in positions for which certification
2 qualifications were required and established certain rights for these employees. Other
3 provisions of the law, which govern the employment of persons in positions requiring
4 certification qualifications or established rights and responsibilities for these persons,
5 were to be applied to persons employed by community college districts in a manner
6 consistent with the provisions of the Article.

7 Education Code Section 13345.05[3] provided definitions to be used in the Article.

8 Education Code Section 13345.10[4] provided the definitions of a contract

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serve in positions for which certification qualifications are required and establish certain rights for such employees. Other provisions of the law which govern the employment of persons in positions requiring certification qualifications by a school district or establish rights and responsibilities for such persons shall be applied to persons employed by community college districts in a manner consistent with the provisions of this article."

[3] Education Code Section 13345.05, as added by Chapter 1654, Statutes of 1971, Section 1:

"For the purposes of this article:
(a) "Contract employee" means an employee of a district who is employed on the basis of a contract in accordance with the provisions of Section 13346.05 or subdivision (b) of Section 13346.20.
(b) "District" means a community college district.
(c) "Positions requiring certification qualifications" are those positions which provide the services for which certifications have been established in this code.
(d) "Regular employee" means an employee of a district who is employed in accordance with the provisions of subdivision (c) of Section 13346.20 or Section 13346.25.
(e) "Academic year" means that period between the first day of a fall semester or quarter and the last day of the following spring semester or quarter."

[4] Education Code Section 13345.10, as added by Chapter 1654, Statutes of 1971, Section 1:

employee and a regular employee for the purposes of other provisions of law.

Education Code Section 13345.15[5] excluded from the provisions of the Article persons employed as superintendents, assistant superintendents, deputy superintendents or presidents of the community college.

Education Code Section 13346[6] required the governing board to employ each certificated person as either a contract employee, a regular employee or a temporary employee.

Education Code Section 13346.05[7] required the governing board of a district to

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"For the purposes of other provisions of law:
(a) A contract employee is a probationary employee.
(b) A regular employee is a permanent employee."

[5] Education Code Section 13345.15, as added by Chapter 1654, Statutes of 1971, Section 1:

"The provisions of this article do not apply to the employment of persons as a superintendent, assistant superintendent, or deputy superintendent of a community college district or as a president of a community college employed by contract pursuant to Section 25490.05."

[6] Education Code Section 13346, as added by Chapter 1654, Statutes of 1971, Section 1:

"The governing board of a district shall employ each certificated person as one of the following: contract employee, regular employee, or temporary employee."

[7] Education Code Section 13346.05, as added by Chapter 1654, Statutes of 1971, Section 1:

"The governing board of a district shall employ persons to serve in positions requiring certification qualifications for the first academic year of his employment or portion thereof by contract. Any person who, at the time an employment contract is offered to him by the district, is neither a regular employee of the district nor a contract employee then serving under a second contract entered into pursuant to Section

1 employ individuals in positions requiring certification qualifications for the first academic
2 year of his employment by contract.

3 Education Code Section 13346.10[8] provided that an employment contract shall
4 contain the terms and conditions agreed upon by both the governing board and the
5 proposed employee.

6 Education Code Section 13346.15[9], subdivision (a), required that, before making
7 a decision relating to the continued employment of a contract employee, an employee
8 was to be evaluated by the governing board. Subdivision (b) required the governing

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13346.20 shall be deemed to be employed for "the first academic year of his employment or a portion thereof."

[8] Education Code Section 13346.10, as added by Chapter 1654, Statutes of 1971, Section 1:

"An employment contract shall contain such terms and conditions as the governing board and the proposed employee shall agree upon and as are consistent with the provisions of the law."

[9] Education Code Section 13346.15, as added by Chapter 1654, Statutes of 1971, Section 1:

"Before making a decision relating to the continued employment of a contract employee, the following requirements shall be satisfied:
(a) The employee has been evaluated in accordance with the evaluation standards and procedures established in accordance with the provisions of Article 5.3 (commencing with Section 13480) of this chapter, a fact determined solely by the governing board.
(b) The governing board has received statements of the most recent evaluations.
(c) The governing board has received recommendations of the superintendent of the district and, if the employee is employed at a community college, the recommendations of the president of that community college.
(d) The governing board has considered the statement of evaluation and the recommendations in a lawful meeting of the board."

board to consider the employee's most recent evaluations. Subdivision (c) required the governing board to have received the president's recommendations if the individual was employed at a community college.

Education Code Section 13346.20[10] required the board, if a contract employee was working under his first contract, to either (a) not enter into a contract with the employee for a second academic year, (b) enter into a contract for the second academic year, or (c) employ the employee as a regular employee for all subsequent academic years.

Education Code Section 13346.25[11] required the board, if a contract employee was employed under his second consecutive contract, to either (a) employ the employee

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[10] Education Code Section 13346.20, as added by Chapter 1654, Statutes of 1971, Section 1:

"If a contract employee is working under his first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:
(a) Not enter into a contract for a second academic year.
(b) Enter into a contract for a second academic year.
(c) Employ the contract employee as a regular employee for all subsequent academic years."

[11] Education Code Section 13346.25, as added by Chapter 1654, Statutes of 1971, Section 1:

"If a contract employee is employed under his second consecutive contract entered into pursuant to Section 13346.20, the governing board, at its discretion and not subject to judicial review except as expressly provided herein, shall elect one of the following alternatives:
(a) Employ the contract employee as a regular employee for all subsequent academic years.
(b) Not employ the contract employee as a regular employee."

as a regular employee for all subsequent academic years or (b) not employ the employee as a regular employee.

Education Code Section 13346.30[12] required the governing board to give written notice of its employment decisions on or before March 15 of the academic year covered by the existing contract. Failure to provide notice to an employee working under his first contract was deemed an extension of the existing contract without change for the following academic year. Failure to give notice to a employee working under his second consecutive contract was deemed a decision to employ him as a regular employee for all subsequent academic years.

Education Code Section 13346.32[13] provided that a contract employee, who

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[12] Education Code Section 13346.30, as added by Chapter 1654, Statutes of 1971, Section 1:

"The governing board shall give written notice of its decision under Section 13346.20 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. Failure to give the notice as required to a contract employee under his first contract shall be deemed an extension of the existing contract without change for the following academic year. The governing board shall give written notice of its decision under Section 13346.25 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. Failure to give the notice as required to a contract employee under his second consecutive contract shall be deemed a decision to employ him as a regular employee for all subsequent academic years."

[13]Education Code Section 13346.32, as added by Chapter 1654, Statutes of 1971, Section 1:

"If the contract employee objects to the decision of the governing board made pursuant to Section 13346.25, he may request a hearing. The hearing shall be requested and conducted, and the proposed decision shall be prepared, in accordance with the provisions of Section 13443."

1 objected to a decision of the board made pursuant to Section 13346.25, could request a
2 hearing and the hearing was to be conducted pursuant to the provisions of Section
3 13443.

4 Education Code Section 13447[14] provided that, when in the opinion of the

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[14] Education Code Section 13447, as amended by Chapter 1565, Statutes of 1970, Section 3:

"No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 13313, 13327 and 13338 and no probationary employee shall be deprived of his position for cause other than as specified in Sections 13442 and 13443, except in accordance with the provisions of Section 13319 and Sections 13447 to 13452, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by reason of either of such conditions to decrease the number of permanent employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the certificated employees of said district, permanent as well as probationary, at the close of the school year; provided that the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Notice of such termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 13443 and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 13262 and 13263 of this code. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 13443, he shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render."

1 governing board of the district it shall have become necessary by reason of declining
2 student attendance or a reduction or discontinued services to decrease the number of
3 permanent employees in the district, the governing board may terminate the services of
4 not more than a corresponding percentage of the certificated employees of the district,
5 permanent as well as probationary, at the close of the school year. However, the
6 services of no permanent employee may be terminated under this section while any
7 probationary employee, or any other employee with less seniority, is retained to render a
8 service for which said permanent employee is certificated or competent to render.

9 Education Code Section 13481[15] required that contract employees be evaluated
10 at least once in each academic year and required that regular employees be evaluated
11 at least once every two academic years.

12 Education Code Section 25490[16] provided that the provisions of the article shall
13 apply to all persons employed by a community college district in positions requiring

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[15] Education Code Section 13481, as added by Chapter 1654, Statutes of 1971, Section 4:

"Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every two academic years.

Whenever an evaluation is required of a certificated employee by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district."

[16] Education Code Section 25490, added by Chapter 1654, Statutes of 1971, Section 5:

"The provisions of this article apply to all persons employed by a community college district in positions requiring certification qualification."

1 certification qualification.

2 Education Code Section 25490.10[17] provided that Article 3.5 (commencing with
3 Education Code Section 13345) and Article 5.3 (commencing with Education Code
4 Section 13480) shall govern the employment, rights, responsibilities, dismissal, and
5 impostion of penalties for persons employed by a community college district in positons
6 requiring certification qualifications.

7 Education Code Section 25490.30[18] provided that the rules and regulations

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[17] Education Code Section 25490.10, as added by Chapter 1654, Statutes of 1971, Section 5:

"The employment, rights, responsibilities, dismissal, imposition of penalties for persons employed by a community college district in positions requiring certification qualifications shall be governed by the provisions of Article 3.5 (commencing with Section 13345), and Article 5.3 (commencing with Section 13480) of Chapter 2 of Division 10, with the exception given in Section 25490.05. The remainder of the provisions of Division 10 shall be applied to certificated persons employed by a community college district in accordance with their intent and in a manner consistent with provisions of Articles 3.5 and 5.3 and with the provisions of this chapter (hereinafter referred to in this chapter, collectively, as "this act").

Whenever in Sections 13404 to 13412, inclusive, the term "Commission on Professional Competence" is used, it shall be deemed for the purpose of this chapter to mean either "arbitrator" or "hearing officer," whichever is the case.

The provisions of this act shall take precedence, for the purposes of certificated persons employed by a community college district, over any other act enacted by the Legislature at any session which, explicitly or implicitly, would result in certificated persons employed by a community college district being governed by provisions inconsistent with the provisions of this act."

[18] Education Code Section 25490.30, as added by Chapter 1654, Statutes of 1971, Section 5:

"Rules and regulations adopted in relation to the evaluation process shall assure that the standards and procedures of the evaluation process in each district will be fair and in accordance with the intent of this act and that the evaluation processes of all of

adopted in relation to the evaluation process were to assure that the standards and procedures of the evaluation process in each district be fair and in accordance with the intent of that act and that the evaluation processes of all of the districts be basically similar in substance and intent. The regulations were to permit and encourage a district governing board to establish evaluation procedures and standards which meet the particular needs of that district.

SECTION 2: LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Chapter 1010, Statutes of 1976, Section 2, operative April 30, 1977, recodified and renumbered the Education Code. Code sections cited above, before and after the recodification and renumbering, are as follows. Code Sections amended after January 1, 1975 t are shown in bold.

Former Code Section	New Code Section
13345	87600
13345.05	87601
13345.10	87602
13345.15	87603
13346	87604
13346.05	87605
13346.10	87606

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the districts are basically similar in substance and intent. These regulations shall permit and encourage a district governing board to establish evaluation procedures and standards which meet the particular needs of that district."

13346.15	87607
13346.20	87608
13346.25	87608.5
13346.25	87609
13346.30	87610
13346.32	**87611**
25490	87620
25490.10	87622
25490.30	87626
13481	**87663**
13447	87743

Chapter 470, Statutes of 1981, Section 382.5, added Education Code Section 87714[19] which required the chief executive officer of each community college district to, at times required by the county superintendent of schools, and at least annually, provide an affidavit that all employees in positions requiring certifications were properly certificated for the work performed."

[19] Education Code Section 87714, as added by Chapter 470, Statutes of 1981, Section 382.5:

"The chief executive officer of each community college district shall, at times required by the county superintendent of schools, and at least annually, provide an affidavit that all employees in positions requiring certifications were properly certificated for the work performed."

1 Chapter 973, Statutes of 1988, Section 8, added Section 70901[20] which requires

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[20] Education Code Section 70901, as added by Chapter 973, Statutes of 1988, Section 8:

"(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and

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those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

1 the Board of Governors of the California Community Colleges to provide leadership for
2 and direction to the community college system. Subdivision (b), requires the board to
3 provide general supervision over community college districts and perform designated
4 functions including, at subparagraph (1)(B), minimum standards for the employment of
5 academic and administrative staff in community colleges.

6 Part 51 of Division 7 contains provisions applying to all employees, commencing
7 with Education Code Section 87000. Chapter 2.5, commencing with Education Code
8 Section 87350, contains provisions governing qualifications for community college
9 personnel.

10 Chapter 973, Statutes of 1988, Section 8 added Article 2 of Chapter 2.5,
11 commencing with Education Code Section 87355, and provides minimum qualification

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(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors."

1 and hiring criteria.

2 Section 87356[21], subdivision (a), requires the board of governors to adopt

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[21] Education Code Section 87356, as added by Chapter 973, Statutes of 1988, Section 28:

"(a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as a community college faculty member. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as a community college faculty member teaching any credit courses, as any of the following:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(3) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade or industrial fields, either of the following:

(A) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(B) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(b) The board of governors shall adopt regulations establishing appropriate minimum qualifications for extended opportunity programs and services workers, pursuant to Section 69648.7

(c) The board of governors shall adopt regulations establishing appropriate minimum qualifications for handicapped student programs and service workers, pursuant to Section 78440.5.

(d) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as an instructional or student services administrator. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as an instructional or student services administrator as all of the following:

(1) Possession of a master's degree.

regulations to establish and maintain the minimum qualifications regarding the hiring of community college faculty members. These regulations were to establish the minimum qualifications for hire as a community college faculty member teaching any credit courses as any of the following:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(3) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade or industrial fields, possession of a bachelor's or associate degree plus designated years of practical experience in the field.

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(2) One year of formal training, internship, or leadership experience reasonably related to the administrator's administrative assignment, which may, but need not be, concurrent with the required full-time service.

(e) The Legislature finds and declares that this section does not create a state-mandated local program cost because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions."

1 Section 87357[22] requires the board of governors, when establishing and

2 maintaining minimum qualifications to:

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[22]Education Code Section 87357, as added by Chapter 973, Statutes of 1988, Section 28:

"(a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, consult with and rely primarily on the advice and judgment of, the statewide Academic Senate, and with regard to minimum qualifications for instructional or student service administrators, consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. In either case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) The board of governors shall establish a process to review at least every three years the continued appropriateness of the minimum qualifications, and the adequacy of the means by which they are administered. The process shall provide for the appointment of a representative group of community college faculty, administrators, students, and trustees to conduct or otherwise assist in the review, including particularly, representatives of academic senates, collective bargaining organizations, and statewide faculty associations. In addition, the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and representative of ethnic minority communities.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for service."

(1) To consult with and rely on the advice and judgment of the statewide Academic Senate when determining the minimum qualifications for faculty; and consult with an appropriate statewide organization of administrators when discussing the minimum qualifications for instructional or student service administrators, and

(2) To establish a process to review the continued appropriateness and adequacy of the minimum qualifications and the means by which they are administered at least every three years.

Subdivision (c) requires the board to prescribe, by regulation, a working definition of the term "discipline" and to prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications for hire.

Section 87358[23] requires the board of governors to periodically designate a group of community college faculty, administrators and trustees to review each community college district's applications of minimum qualifications to faculty and administrators.

Section 87359[24] requires the board of governors to adopt regulations setting forth

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[23] Education Code Section 87358, as added by Chapter 973, Statutes of 1988, Section 28:

"The board of governors shall periodically designate a team of community college faculty, administrators, and trustees to review each community college district's application of minimum qualifications to faculty and administrators."

[24] Education Code Section 87359, as added by Chapter 973, Statutes of 1988, Section 28:

"The board of governors shall adopt regulations setting forth a process

1 a process authorizing local governing boards to employ faculty members, instructional
2 administrators and student service administrators who do not meet the minimum
3 qualifications adopted by the board pursuant to Section 87356. The regulations shall
4 require:
5 (a) That no one may be hired to serve as a community college faculty
6 member, instructional administrator, or student services administrator

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authorizing local governing boards to employ faculty members, instructional administrators, and student services administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member, instructional administrator, or student services administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect."

unless the governing board determines that he or she possesses qualifications that are at least the equivalent to the minimum qualifications specified in the regulations of the board adopted pursuant to Section 87356.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect."

Article 3, commencing with Education Code Section 87360 provides additional hiring criteria. Section 87360[25] requires:

(a) That, by July 1, 1990, the district governing boards shall develop hiring criteria for faculty and administrators that include an understanding of diverse academic, socioeconomic, cultural, disability and ethnic backgrounds of community college students.

(b) That, by July 1, 1990, the hiring criteria, policies and procedures for new faculty members must be developed and agreed upon jointly by representatives of the governing board and the academic senate and approved by the governing board.

(c) That, until a joint agreement is approved, the existing district process in existence on January 1, 1989 must remain in effect.

Chapter 3 of Part 51, commencing with Education Code Section 87400, provides law regarding Employment. Article 2, commencing with Education Code Section 87600 controls the "Employment of Faculty".

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[25] Education Code Section 87360, as added by Chapter 973, Statutes of 1988, Section 28:

"(a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

(b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect."

1 Chapter 973, Statutes of 1988, Section 46, added Education Code Section

2 87610.1[26] to require, in subdivision (a), that, in those districts where tenure evaluation

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[26] Education Code Section 87610.1, as added by Chapter 973, Statutes of 1988, Section 46:

"(a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

Arbitration, as used in this section refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to the provisions of subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration with representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need

1 procedures are collectively bargained, the faculty's exclusive representative shall
2 consult with the academic senate prior to engaging in collective bargaining on these
3 procedures. Subdivision (b) requires that allegations that the community college district,
4 in a decision to grant tenure, made a negative decision that to a reasonable person was
5 unreasonable, or violated, misinterpreted, or misapplied, any of its policies and
6 procedures concerning the evaluation of probationary employees shall be classified and
7 procedurally addressed as grievances. Allegations that the community college district in
8 a decision to reappoint a probationary employee violated, misinterpreted, or misapplied
9 any of its policies and procedures concerning the evaluation of probationary employees
10 shall be classified and procedurally addressed as grievances. If there is no contractual
11 grievance procedure resulting in arbitration, these allegations shall proceed to hearing in
12 accordance with Section 87740. Subdivision (d) provides that the arbitrator may issue
13 an appropriate make-whole remedy, which may include, but need not be limited to,

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not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees."

1 backpay and benefits, reemployment in a probationary position, and reconsideration.

2 Note: Education Code Section 87740[27], subdivision (c) (as last amended in

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[27] Education Code Section 87740, as last amended by Chapter 758, Statutes of 1995, Section 158:

"(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of the notice may be deferred until the 45th day of employment and all time periods and deadline dates prescribed in this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall

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be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt, from time to time, rules and procedures not inconsistent with this section that may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a contract employee for the ensuing college year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the colleges and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that the employee's service will not be required for the ensuing year shall be given no later than May 15.

(f) If a governing board notifies a contract employee that his or her services will not be required for the ensuing year, the board, within 10 days after delivery to it of the employee's written request, shall provide him or her with a statement of its reasons for not reemploying him or her for the ensuing college year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) If the governing board does not give notice provided for in subdivision (e) on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If, after request for hearing pursuant to subdivision (b), any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in

1995), provides that the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefore within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the faculty member. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before

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subdivisions (c), (d), (e) and (h) that occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance."

May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

Chapter 973, Statues of 1988, Section 47, repealed Education Code Section 87611. Section 48 added a new Education Code Section 87611[28] to require, for the first time, that any final decision reached after a grievance or hearing shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

Article 4, commencing with Education Code Section 87660, provides for the evaluation and discipline of community college faculty.

Chapter 973, Statutes of 1988, Section 51, amended Education Code Section 87663[29] to add subdivisions (c) through (i). Subdivision (c), requires that evaluations, for

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[28] Education Code Section 87611, as added by Chapter 973, Statutes of 1988, Section 48:

"A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure."

[29] Education Code Section 87663 (former Section 13481, recodified and renumbered as Section 87663 by Chapter 1010, Statutes of 1976), as amended by Chapter 973, Statutes of 1988, Section 51:

"(a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every ~~two~~ three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a certificated employee by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing

1 the first time, include a peer review process. Subdivision (d) requires the peer review
2 process to be conducted on a departmental or divisional basis, and address the
3 demographics of California and the principles of affirmative action, and requires that the
4 peers reviewing be both representative of the diversity of California and sensitive to
5 affirmative action concerns. Subdivision (e) recognizes that the faculty evaluation
6 procedures may be negotiated as part of the collective bargaining process. Subdivision
7 (f) requires the faculty's exclusive representative to consult with the academic senate
8 prior to engaging in collective bargaining regarding faculty evaluation procedures.

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board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.

(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation."

Subdivision (g) states the legislative intent that the faculty evaluation process, include, to the extent practicable, student evaluation. Subdivision (h) provides that a probationary faculty member be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative, without according him or her de facto tenure rights. Subdivision (i) requires the governing board to establish and disseminate written evaluation procedures for administrators, with the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation.

Chapter 973, Statutes of 1988, Section 52, added Education Code Section 87743.1[30] to define "faculty service area" as a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district.

Chapter 973, Statutes of 1988, Section 53, added Education Code Section 87743.2[31] to require that, no later than July 1, 1990, each community college district

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[30] Education Code Section 87743.1, as added by Chapter 973, Statutes of 1988, Section 52:

"As used in this chapter, "faculty service area" means a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district."

[31] Education Code Section 87743.2, as added by Chapter 973, Statutes of 1988, Section 53:

"Not later than July 1, 1990, each community college district shall establish faculty

shall establish faculty service areas through the collective bargaining process. The exclusive representative is required to consult with the academic senate in devoping its proposals.

Chapter 973, Statutes of 1988, Section 54, added Education Code Section 87743.3[32] to provide that each faculty member shall qualify for one or more faculty service areas at the time of initial employment for which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. Any dispute arising from an

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service areas. The establishment of faculty service areas shall be within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals."

[32] Education Code Section 87743.3, as added by Chapter 973, Statutes of 1988, Section 54:

"Each faculty member shall qualify for one or more faculty service areas at the time of initial employment. A faculty member shall be eligible for qualification in any faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. The application shall be received by the district on or before February 15 in order to be considered in any proceeding pursuant to Section 87743 during the academic year in which the application is received. Any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance. If the district has no grievance procedure, fair and equitable procedures for the resolution of the disputes shall be developed by the academic senate and representatives of the governing board."

allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance.

Chapter 973, Statutes of 1988, Section 55, added Education Code Section 87743.4[33] to require that the district maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards.

Chapter 973, Statues of 1988, Section 56, added Education Code Section 87743.5[34] which requires that each community college district, no later than July 1, 1990, to establish competency criteria for faculty members employed by the district after meeting and negotiating with the faculty's exclusive representative.

Chapter 1302, Statutes of 1990, Section 33, amended Education Code Section

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[33] Education Code Section 87743.4, as added by Chapter 973, Statutes of 1988, Section 55:

"Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards. The record shall be contained in the faculty member's personnel file."

[34] Education Code Section 87743.5, as added by Chapter 973, Statutes of 1988, Section 56:

"To determine competency to serve in a faculty service area for the purposes of Section 87743, each community college district shall, not later than July 1, 1990, establish competency criteria for faculty members employed by the district. The development and establishment of such competency criteria shall be within the scope of meeting and negotiating pursuant to Section 3543 of the Government Code."

87357, subdivision (a)(1)[35] to include, for the first time, that the board of governors must consult with, and rely primarily on the advice and judgment of the appropriate apprenticeship teaching faculty and labor organization representatives with regard to minimum qualifications for apprenticeship instructors.

Chapter 1302, Statutes of 1990, Section 122, amended Education Code Section 87714[36] to substitute the board of governors for the county superintendent of schools to whom the annual affidavits shall be sent.

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[35] Education Code Section 87357, added by Chapter 973, Statutes of 1988, Section 28, as amended by Chapter 1302, Statutes of 1990, Section 33:

"(a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, the board of governors shall consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate~~, and~~. ~~w~~With regard to minimum qualifications for ~~instructional or student service~~ educational administrators, the board of governors shall consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. With regard to minimum qualifications for apprenticeship instructors, the board of governors shall consult with, and rely primarily on the advice and judgment of, appropriate apprenticeship teaching faculty and labor organization representatives. In ~~either~~ each case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups."

[36] Education Code Section 87714, added by Chapter 470, Statutes of 1981, Section 382.5, as amended by Chapter 1302, Statutes of 1990, Section 122:

"The chief executive officer of each community college district shall, at times as required by the ~~county superintendent of schools, and at least annually~~ board of governors, provide an affidavit that, during the 12 months preceding the execution of the affidavit, all academic employees ~~in positions requiring certifications were properly certificated~~ of the district possessed the required minimum qualifications for the work they performed."

Chapter 8, Statutes of 1993, Section 35.5 repealed Education Code Section 87356, effective April 15, 1993, Chapter 506, Statutes of 1993, Section 2, added a new Education Code Section 87356[37] which was similar to the section repealed, but added faculty members teaching noncredit instruction, librarians, counselors, educational administrators, extended opportunity programs and services workers, disabled students programs and services workers, apprenticeship instructors and supervisors of health the new section also did not repeat the specific requirements set forth in the repealed section.

Chapter 506, Statutes of 1993, Section 3, amended Education Code Section 87359[38] to require the board of governors to adopt regulations setting forth a process

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[37] Education Code Section 87356, added by Chapter 506, Statutes of 1993, Section 2:

"(a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for service as a faculty member teaching credit instruction, a faculty member teaching noncredit instruction, a librarian, a counselor, and educational administrator, an extended opportunity programs and services worker, a disabled students programs and services worker, an apprenticeship instructor, and a supervisor of health.

The Legislature finds and declares that this section does not create a state-mandated local program because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions."

[38] Education Code Section 87359, added by Chapter 973, Statutes of 1988, Section 28, as amended by Chapter 506, Statutes of 1993, Section 3:

"The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members~~, instructional~~ and educational administrators~~, and student services administrators~~ who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. Unless and until amended pursuant to the

1 authorizing local governing boards to employ faculty members and educational
2 administrators who do not meet the applicable minimum qualifications. Prior to this
3 amendment, the board of governors was also required to adopt regulations concerning
4 instructional and student service administrators.

5 Chapter 1023, Statutes of 1998, Section 1, amended Education Code Section
6 70901 to make technical changes.

7 Chapter 124, Statutes of 2000, Section 1, amended Education Code Section
8 87610.1 to make technical changes.

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process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member~~,~~ ~~instructional administrator, or student services administrator~~ or educational administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect."

SECTION 3. CALIFORNIA CODE OF REGULATIONS[39]

The Title 5 Regulations for California Community Colleges are found in Division 6. Chapter 4 governs "Employees". Subchapter 2 controls Certificated Positions. Article 1.6, commencing with Section 53130, sets forth regulations for the Evaluation of Academic Employees. Section 53130 (added in 1991 and last amended in 1993) requires the governing board of a community college district to adopt and cause to be printed, and made available to each academic employee of the district, reasonable rules and regulations providing for the evaluation of the performance of academic employees in the their assigned duties.

Subchapter 4, commencing with Section 53400, provides regulations for "Minimum Qualifications". Section 53400 (added in 1990 and last amended in 1994) provides that Sections 53400 through 53430, implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community college faculty and administrators.

Section 53401 (added in 1992 and last amended in 1994) provides that community service or contract classes, which do not award college credit and are not supported by state apportionment, are not subject to this subchapter. Contract classes which award college credit are subject to the subchapter, even if they are not supported

[39] Copies of the Regulations cited in this Section 3 are attached hereto as Exhibit 4 and are incorporated herein by reference.

by state apportionment.

Section 53402 (added in 1990 and last amended in 1991) provides definitions, including those of (a) "adminstrator", (b) "educational administrator" and (c) "faculty" or "faculty member".

Section 53403 (added in 1992 and last amended in 1993) provides that the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Section 53404 (added in 1992 and last amended in 1994) provides a definition for "experience". Under the definition, "professional experience" includes teaching experience, whereas, "occupational experience" does not include teaching experience.

Section 53405 (added in 1993) provides that the terms "certificated employees" or employees in "positions with certification qualifications" are deemed to also apply to persons employed by districts pursuant to minimum qualifications established pursuant to Subchapter 4 of this Division.

Section 53406 (added in 1993 and last amended in 1994) requires that all degrees and units used to satisfy minimum qualifications be from accredited institutions, unless otherwise specified.

Section 53407 (added in 1993) adopts and incorporates by reference the two lists published by the Chancellor's Office, entitled "Disciplines Requiring the Master's Degree"

and "Disciplines in which the Master's Degree is not Generally Expected or Available," as revised September 1993, for the following purposes:

(1) To extablish a working definition of the term "discipline" as used in Section 53410;

(2) To define which disciplines are "reasonably related" to one another, for purposes of Section 53410; and

(3) To define disciplines in which the master's degree is not generally expected or available, as opposed to those for which the master's degree is required, for purposes of Section 53410.

Article 2, commencing with Section 53410, regulates "Qualifications and Equivalencies". Section 53410 (added in 1990 and last amended in 1993) establishes the minimum qualifications for service as a community college faculty member teaching any credit course, or as a counselor or librarian, as follows:

(a) Possession of a master's degree, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(b) Possession of a master's degree, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(c) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally,

disciplines in specialized technical, trade, or industrial fields, either of the following:

(1) Possession of a bachelor's degree, or equivalent foreign degree, plus two years of professional experience directly related to the faculty member's assignment; or

(2) Possession of an associate degree, or equivalent foreign degree, plus six years of professional experience directly related to the faculty member's assignment.

Section 53410.1 (added in 1993) provides that a bachelor's degree in the discipline of the assignment plus a professional license or certification may be substituted for the minimum qualifications for certain disciplines.

Section 53412 (added in 1990 and last amended in 1993) provides the minimum qualifications for a faculty member teaching a noncredit course.

Section 53414 (added in 1990 and last amended in 1993) provides the minimum qualifications for disabled students programs and services employees.

Section 53415 (added in 1993) provides the minimum qualifications for service as a learning assistance or learning skills coordinator or instructor, or tutoring coordinator.

Section 53416 (added in 1993) provides the minimum qualifications for an instructor or coordinator of general or occupational work experience education.

Section 53417 (added in 1993) requires that, in addition to other minimum

qualifications specified in this article, the minimum qualifications for a faculty member teaching any credit or noncredit course shall include a current, valid certificate to work or a license to practice in California, whenever the instructor's possession of such a certificate or license is required for program or course approval.

Section 53420 (added in 1990 and amended in 1993) provides the minimum qualifications for service as an educational administrator.

Section 53430 (added in 1990 and last amended in 1994), subdivision (a), prohibits the hiring of a community college faculty or educational administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in this Article or elsewhere in this Division. Subdivision (b) requires the process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty employed under the authority granted by this section possesses qualifications that are at least the equivalent to the applicable minimum qualifications specified in this Division. Subdivision (c) requires that the process shall further require that the academic senate be provided with an opportunity to present its views to the governing board before the governing board makes a determination; and that the written record of

the decision, including the views of the academic senate, shall be available for review, pursuant to Education Code Section 87358. Subdivision (d) requires the district to be bound by the minimum qualifications set forth in this subchapter until a joint agreement is reached and approved pursuant to subdivision (b).

PART III. STATEMENT OF THE CLAIM

SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

The statutes and California Codes of Regulations referenced in this test claim result in community college districts incurring costs mandated by the state, as defined in Government Code Section 17514[40], by creating new state-mandated duties related to the uniquely governmental function of providing public service and education to students and these statutes apply to school districts and do not apply generally to all residents and entities in the state.[41]

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[40] Government Code Section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1. 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[41] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App. 3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

The new duties mandated by the state upon community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

Education Code Provisions

A) Pursuant to the statutes, code sections and Title 5 regulations cited hereinabove, to establish and implement policies and procedures, and periodically update those policies and procedures regarding the employment of faculty and the resolution of disputes on hiring and tenure issues.

B) Pursuant to Education Code Section 70901, subdivision (b), subparagraph (1)(B), establishing and implementing minimum standards for the employment of academic and administrative staff.

C) Pursuant to Education Code Section 87357, subdivision (a)(1), consulting with and advising the board of governors regarding the minimum qualifications for faculty and administrators.

D) Pursuant to Education Code Section 87357, subdivision (a)(2), conducting or otherwise assisting, at least every three years, in any review of the continued appropriateness of the minimum qualifications for the employment of faculty and administrators.

E) Pursuant to Education Code Section 87358, participating, as designated by the

board of governors, in the review of each community college district's application of minimum qualifications to faculty and administrators.

F) Pursuant to Education Code Section 87359, complying with the process adopted by the board of governors providing for the employment of faculty members and educational administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. These regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member or educational administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) In the event a joint agreement is not reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

G) Pursuant to Education Code Section 87360, subdivision (a), complying with the criteria established by the governing board when hiring faculty and administrators that includes a sensitivity to, and understanding of, the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. Pursuant to subdivision (b), developing and agreeing, and updating, with representatives of the governing board and the academic senate hiring criteria, policies, and procedures for new faculty members. In the event a joint agreement is not yet reached, the existing district process in existence on January 1, 1989, shall remain in effect.

H) Pursuant to Education Code Section 87610.1, subdivision (a), in those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, consulting with the faculty's exclusive representative prior to engaging in collective bargaining on these procedures.

I) Pursuant to Education Code Section 87610.1, subdivision (b), participating in arbitration procedures in response to grievance allegations that the community college district in a decision to grant tenure made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary

employees. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

J) Pursuant to Education Code Section 87610.1, subdivision (b), participating in arbitration procedures in response to grievance allegations that the community college district, in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

K) Pursuant to Education Code Section 87740, subdivision (c), in the event there is no contractual grievance procedure resulting in arbitration pursuant to Education Code Sections 87610.1, subdivision (b), conducting the hearing and making a decision in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15

days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the faculty. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

L) Pursuant to Education Code Section 87610.1, subdivision (d), complying with an arbitrator's make-whole remedies, which may include, but need not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration.

M) Pursuant to Education Code Section 87611, the legal cost of appearing in a court or before any other hearing panel when appealing, or in response to a petition appealing, a final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1.

N) Pursuant to Education Code Section 87663, subdivisions (c) and (d), conducting evaluations of faculty members of a community college district using a peer review process on a departmental or divisional basis, which shall address the forthcoming demographics of California, and the principles of affirmative action.

(1) Pursuant to subdivision (e), when negotiated as part of the collective bargaining process, conducting evaluations of faculty members of a community college district pursuant to the terms of that agreement.

(2) Pursuant to subdivision (f), in those districts where faculty evaluation procedures are collectively bargained, consulting with the faculty's exclusive representative prior to engaging in collective bargaining regarding those procedures.

(3) Pursuant to subdivision (g), conducting evaluations of faculty members of a community college district to the extent practicable using student evaluations.

(4) Pursuant to subdivision (h), evaluating a probationary faculty member under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to

elect an exclusive representative.

(5) Pursuant to subdivision (i), evaluating administrators pursuant to the evaluation procedures established by the governing board and, to the extent possible, to include faculty evaluation.

O) Pursuant to Education Code Section 87714, providing affidavits, at times required by the board of governors, that, during the 12 months preceding the execution of the affidavit, all academic employees of the district possessed the required minimum qualifications for the work they performed.

P) Pursuant to Education Code Section 87743.2, establishing and updating faculty service areas, within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals.

Q) Pursuant to Education Code Section 87743.3, receiving and determining faculty applications to add faculty service areas for which the faculty member qualifies.

R) Pursuant to Education Code Section 87743.3, classifying and procedurally addressing any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area. If the district has no grievance procedure, fair and equitable procedures for the resolution of the disputes shall be developed by the academic senate and representatives of the governing board.

S) Pursuant to Education Code Section 87743.4, maintaining a permanent record in

each faculty member's personnel file, for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards.

T) Pursuant to Education Code Section 87743.5, establishing and updating competency criteria for faculty members employed by the district within the scope of meeting and negotiating pursuant to Section 3543 of the Government Code.

Title 5, California Code of Regulations Provisions

A) Pursuant to Title 5, California Code of Regulations, Section 53130, to adopt and cause to be printed, and made available to each academic employee of the district, reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

B) Pursuant to Title 5, California Code of Regulations, Section 53403, to establish and implement policies to recognize faculty who were qualified to teach in their respective discipline under the minimum qualifications when he or she was employed.

C) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (a), determining whether applicants for college faculty or educational administrator positions have qualifications that are at least equivalent to the minimum conditions specified, including:

(1) Verification that all degrees and units used to satisfy minimum

qualifications are from, accredited institutions, unless otherwise specified, as required by Title 5, California Code of Regulations, Section 53406.

(2) Verification of disciplines requiring a Master's Degree and those disciplines in which a Master's Degree is not generally expected or available by reference to publications and lists maintained by the Chancellor's office as required by Title 5, California Code of Regulations, Section 53407.

(3) Verification of the minimum qualifications for service as a community college faculty member teaching any credit course, or as a counselor or librarian as required by Title 5, California Code of Regulations, Section 53410.

(4) Verification of possession of a bachelor's degree in the discipline of the proposed assignment plus a professional license or certification as required by Title 5, California Code of Regulations, Section 53410.1.

(5) Verification of possession of the minimum qualifications for a faculty member teaching a noncredit course as required by Title 5, California Code of Regulations, Section 53412.

(6) Verification of possession of the minimum qualifications for a faculty member teaching disabled programs and services as required by Title 5, California Code of Regulations, Section 53414.

(7) Verification of possession of the minimum qualifications for a faculty

member teaching as a learning assistance or learning skills coordinator or instructor, or tutoring coordinator as required by Title 5, California Code of Regulations, Section 53415.

(8) Verification of possession of the minimum qualifications for a faculty member instructing or coordinating general or occupational work experience education as required by Title 5, California Code of Regulations, Section 53416.

(9) Verification of possession of a current, valid certificate to work or a license to practice in California whenever the instructor's possession of such a certificate of license is required for program or course approval as required by Title 5, California Code of Regulations, Section 53417.

(10) Verification of possession of the minimum qualifications for service as an educational administrator as required by Title 5, California Code of Regulations, Section 53420.

D) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (b), developing and agreeing upon the process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty, jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each

individual faculty employed under the authority granted by this section possesses qualifications that are at least the equivalent to the applicable minimum qualifications specified in this Division.

E) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (c), the agreed upon process further requires that the academic senate be provided with an opportunity to present its views to the governing board before the governing board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review, pursuant to Education Code Section 87358.

F) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (d), to be bound by the provisions of the subchapter until a joint agreement is reached and approved pursuant to subdivision (b).

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[42] statutory exceptions to a finding

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[42] Government Code section 17556 as last amended by Chapter 589/89:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been

of costs mandated by the state apply to this statute. Note that to the extent community colleges may have previously performed functions similar to those mandated by the referenced code section, such efforts did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse districts when these activities became mandated.[43]

SECTION 3. FUNDING FOR THE STATE MANDATE

"AB 1725," Statutes of 1988, Chapter 973 Programs

Several of the duties included in this test claim were initially established by "AB 1725," Statutes of 1988, Chapter 973. At Section 70 (an uncodified section),

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declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

[43] Government Code section 17565, as added by Chapter 879/86:

If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

1 subdivision (b) (2), states: "It is the intent of the Legislature that moneys appropriated
2 during Phase II fully fund any state mandate created pursuant to this section." At
3 subdivision (e): "Based on estimates provided . . . , the Legislature finds and declares
4 that its estimate of this funding amount is seventy million dollars ($70,000,000), in
5 addition to the seventy million dollars ($70,000,000) estimated under subdivision (d) [for
6 Phase I]."

7 The appropriations referenced in the Section 70 intent language are assigned to
8 specific priorities in Education Code section 84755[44] (added by Statutes of 1988,

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[44] Education Code section 84755, as added by Chapter 973/88, Section 21.7

(a) The Legislature finds and declares that program-based funding, once implemented, will more adequately and accountably fund the costs of providing quality community college education. Given that program-based funding will not be implemented until fiscal year 1991-92, given that community colleges will be entering a period of major reform and incurrence of new state mandates commencing in January 1989, and given that community colleges will be entering this period of reform having lost purchasing power since the 1977-78 fiscal year, the Legislature recognizes the need to create a transitional funding mechanism for program improvement and mandate funding that can operate until program-based funding is implemented.

(b) For the purpose of improving the quality of community college educational programs and services, for the purpose of reimbursing state-mandated local program costs imposed by this act, and for the purposes of initially implementing specified reforms, the board of governors shall, from amounts appropriated for purposes of this section, allocate program improvement revenues to each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year. However, this amount shall be increased or decreased to provide for equalization in a manner determined by the Board of Governors, consistent with Sections 84703 to 84705, inclusive.

Each community college district shall use its allocation to initially reimburse state-mandated local program costs, and then to implement specified reforms and make authorized program and service improvements as follows:

(1) Developing articulated programs provided for in Section 69 of Chapter 973 of the Statutes of 1988 with school districts and campuses of the

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University of California and California State University.

(2) Applying minimum qualifications to all newly hired faculty and administrators, including candidates for these positions as required by Section 87356.

(3) Developing and administering a process for waiver of minimum qualifications as required by Section 87359.

(4) Establishing and applying local hiring criteria as required by Section 87360.

(5) Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive.

(6) Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.

(7) Establishing and applying new processes for tenure evaluation required by Section 87610.1.

(8) Establishing and applying the tenure denial grievance procedure required by Section 87610.1.

(9) Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458, inclusive.

(10) Publishing and distributing a report on the affirmative action success rate as required by Section 87102.

(11) Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.

(12) Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.

(13) Augmenting budgets for college libraries and learning resources.

(14) Augmenting budgets for plant maintenance and operations.

(15) Adding new courses or programs to serve community need.

(16) Making progress towards affirmative action goals and timetables established by the district.

(17) Developing and maintaining programs and services authorized by Section 78212.5.

(18) Augmenting budgets for student services in the areas of greatest need.

(19) Providing for release time for faculty and staff as deemed appropriate by the governing board of each community college district, to enable faculty and staff participation in implementing reforms.

(c) Except as provided by Section 87482.6, and except as necessary to reimburse the costs of new state mandates, district governing boards shall have full authority to expend program improvement allocations for any or all of the authorized purposes specified in subdivision (b).

1 Chapter 973, Section 21.7), including Section 87610.1 which is referenced at
2 subdivision (b), items (7) and (8). However, in a preamble, subdivision (b) states that
3 the new funds will be allocated to "each district on the basis of an amount per unit of
4 average daily attendance funded in the prior fiscal year," but only after the amount is
5 "increased or decreased to provide for equalization." This effectively negates any
6 concept of cost reimbursement, which is the actual cost of the increased level of service,
7 it is merely a general funding device disguised as a mandate reimbursement
8 apportionment.

9 Notwithstanding, this funding scenario, to the extent actually implemented, does
10 not meet the Government Code section 17556, subdivision (e) exception to a finding of
11 "costs mandated by the state," since the statute (Chapter 973/88) did not provide for
12 offsetting savings to local agencies or school districts which result in no net costs to the

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(d) As required by the board of governors, the governing board of each community college district shall submit to the board of governors a plan for using the resources allocated pursuant to this section. The board of governors shall review each plan to ensure that proposed expenditures are consistent with the listing of authorized expenditures provided in this section, and the board of governors shall approve all plans to the full extent that expenditures are authorized by this section. To the extent that a community college district expends its program improvement allocation consistent with its plan, the board of governors shall include the district's allocation as part of the district's base budget for subsequent years.

(e) The board of governors, through the annual systemwide budget submitted pursuant to paragraph (5) of subdivision (b) of Section 70901, shall request necessary resources for the purposes of this section. It is the intent of the Legislature that the appropriation and allocation of program improvement money not otherwise provided pursuant to subdivision (b) shall be accomplished through the annual state budget process beginning with the 1989-90 fiscal year. After June 30, 1991, if Section 84750 is implemented, it is the intent of the Legislature to fund the ongoing operations of community college districts pursuant to Section 84750.

local agencies or school districts, or *include additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.* The funding, to the extent it actually was later provided, was provided by *subsequent* legislation, and *the sufficiency* of the funding remains a question of fact (note that Section 70 declares that it is an "estimate"). More to the point, at Section 67 of Chapter 973, Statutes of 1988, the Legislature leaves it to the Commission on State Mandates to determine if there are any reimbursable mandated costs.

To the extent that funding was made available, and continues to be made available each subsequent year, such funding might reduce the reimbursable costs, but does not preclude an initial determination of whether a reimbursable mandate exists. The test claimant is informed and believes that the Chancellor of the California Community Colleges on or about 1991 prepared a AB 1725 cost questionnaire to obtain from each community college the cost of implementing the provisions of AB 1725, that the cost data was specific to each new program enacted, that most of the community colleges provided this data to the Chancellor, and that the Chancellor is in possession of this information. This information can be utilized to establish base-period cost and revenue information.

Special Purpose Funding

Community colleges may receive dedicated grant and categorical funding for some of the activities included in this test claim (e.g. Matriculation Services). To the

extent that the funding is provided each year, and to the extent that the dedicated funds are applied to activities mandated by the state, the amounts received and applicable to mandated activities will reduce the amount of costs mandated by the state. The test claimant is informed and believes that the Chancellor of the California Community Colleges has the documentation necessary to determine the amounts of these special purpose funds allocated to each college year, and the purposes for which the funds were intended. This information can be utilized to determine the revenue offset amounts each year.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: Declaration of Tom Donner
Executive Vice President - Business and Administration
Santa Monica Community College District

Exhibit 2: Copies of Statutes cited:
- Chapter 124, Statutes of 2000
- Chapter 1023, Statutes of 1998
- Chapter 758, Statutes of 1995
- Chapter 506, Statutes of 1993
- Chapter 1302, Statutes of 1990
- Chapter 973, Statutes of 1988
- Chapter 470, Statutes of 1981

Exhibit 3: Education Code sections cited
- Education Code Section 70901
- Education Code Section 87357
- Education Code Section 87358
- Education Code Section 87359
- Education Code Section 87360
- Education Code Section 87610.1

Education Code Section 87611
Education Code Section 87663
Education Code Section 87714
Education Code Section 87740
Education Code Section 87743.2
Education Code Section 87743.3
Education Code Section 87743.4
Education Code Section 87743.5

Exhibit 4: Title 5, California Code of Regulations sections cited
Section 53130
Section 53207
Section 53403
Section 53406
Section 53407
Section 53410
Section 53410.1
Section 53412
Section 53414
Section 53415
Section 53416
Section 53417
Section 53420
Section 53430

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 4th, 2003, at Santa Monica, California by:

Tom Donner
Executive Vice President - Business and Administration
Santa Monica Community College District

Voice: (310) 434-4000
Fax: (310) 434-4368

PART VI. APPOINTMENT OF REPRESENTATIVE

Santa Monica Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Name Tom Donner
Title Exec. V.P. - Bus. & Admin.

6-4-03
Date

EXHIBIT 1
DECLARATION

DECLARATION OF TOM DONNER

Santa Monica Community College District

Test Claim of Santa Monica Community College District

COSM No. _____

Chapter 124, Statutes of 2000
Chapter 1023, Statutes of 1998
Chapter 758, Statutes of 1995
Chapter 506, Statutes of 1993
Chapter 1302, Statutes of 1990
Chapter 973, Statutes of 1988

Education Code Section 70901	Education Code Section 87611
Education Code Section 87356	Education Code Section 87663
Education Code Section 87357	Education Code Section 87714
Education Code Section 87358	Education Code Section 87740
Education Code Section 87359	Education Code Section 87743.2
Education Code Section 87360	Education Code Section 87743.3
Education Code Section 87610.1	Education Code Section 87743.4
	Education Code Section 87743.5

Title 5, California Code of Regulations

Section 53130	Section 53412
Section 53403	Section 53414
Section 53406	Section 53415
Section 53407	Section 53416
Section 53410	Section 53417
Section 53410.1	Section 53420
	Section 53430

<u>Employment of College Faculty and Administrators</u>

I, Tom Donner, Executive Vice President - Business and Administration, Santa Monica Community College District, make the following declaration and statement.

In my capacity as Executive Vice President - Business and Administration, I am responsible for the employment of faculty and administrators and the resolution of disputes by way of arbitration. I am familiar with the provisions and requirements of the

Statutes, Education Code Sections and Title 5 Regulations enumerated above.

These Statutes, Education Code sections and Title 5 Regulations require the Santa Monica Community College District to implement the following activities:

Education Code Provisions

A) Pursuant to the statutes, code sections and Title 5 regulations cited hereinabove, to establish and implement policies and procedures, and periodically update those policies and procedures regarding the employment of faculty and the resolution of disputes on hiring and tenure issues.

B) Pursuant to Education Code Section 70901, subdivision (b), subparagraph (1)(B), establishing and implementing minimum standards for the employment of academic and administrative staff.

C) Pursuant to Education Code Section 87357, subdivision (a)(1), consulting with and advising the board of governors regarding the minimum qualifications for faculty and administrators.

D) Pursuant to Education Code Section 87357, subdivision (a)(2), conducting or otherwise assisting, at least every three years, in any review of the continued appropriateness of the minimum qualifications for the employment of faculty and administrators.

E) Pursuant to Education Code Section 87358, participating, as designated by the board of governors, in the review of each community college district's application of minimum qualifications to faculty and administrators.

F) Pursuant to Education Code Section 87359, complying with the process adopted by the board of governors providing for the employment of faculty members and educational administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. These regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member or educational administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) In the event a joint agreement is not reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall

1 remain in effect.

2 G) Pursuant to Education Code Section 87360, subdivision (a), complying with the
3 criteria established by the governing board when hiring faculty and administrators
4 that includes a sensitivity to, and understanding of, the diverse academic,
5 socioeconomic, cultural, disability, and ethnic backgrounds of community college
6 students. Pursuant to subdivision (b), developing and agreeing, and updating,
7 with representatives of the governing board and the academic senate hiring
8 criteria, policies, and procedures for new faculty members. In the event a joint
9 agreement is not yet reached, the existing district process in existence on
10 January 1, 1989, shall remain in effect.

11 H) Pursuant to Education Code Section 87610.1, subdivision (a), in those districts
12 where tenure evaluation procedures are collectively bargained pursuant to
13 Section 3543 of the Government Code, consulting with the faculty's exclusive
14 representative prior to engaging in collective bargaining on these procedures.

15 I) Pursuant to Education Code Section 87610.1, subdivision (b), participating in
16 arbitration procedures in response to grievance allegations that the community
17 college district in a decision to grant tenure made a negative decision that to a
18 reasonable person was unreasonable, or violated, misinterpreted, or misapplied,
19 any of its policies and procedures concerning the evaluation of probationary
20 employees. If there is no contractual grievance procedure resulting in arbitration,
21 these allegations shall proceed to hearing in accordance with Section 87740.

J) Pursuant to Education Code Section 87610.1, subdivision (b), participating in arbitration procedures in response to grievance allegations that the community college district, in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

K) Pursuant to Education Code Section 87740, subdivision (c), in the event there is no contractual grievance procedure resulting in arbitration pursuant to Education Code Sections 87610.1, subdivision (b), conducting the hearing and making a decision in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the faculty. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from district funds.

L) Pursuant to Education Code Section 87610.1, subdivision (d), complying with an arbitrator's make-whole remedies, which may include, but need not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration.

M) Pursuant to Education Code Section 87611, the legal cost of appearing in a court or before any other hearing panel when appealing, or in response to a petition

appealing, a final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1.

N) Pursuant to Education Code Section 87663, subdivisions (c) and (d), conducting evaluations of faculty members of a community college district using a peer review process on a departmental or divisional basis, which shall address the forthcoming demographics of California, and the principles of affirmative action.

(1) Pursuant to subdivision (e), when negotiated as part of the collective bargaining process, conducting evaluations of faculty members of a community college district pursuant to the terms of that agreement.

(2) Pursuant to subdivision (f), in those districts where faculty evaluation procedures are collectively bargained, consulting with the faculty's exclusive representative prior to engaging in collective bargaining regarding those procedures.

(3) Pursuant to subdivision (g), conducting evaluations of faculty members of a community college district to the extent practicable using student evaluations.

(4) Pursuant to subdivision (h), evaluating a probationary faculty member under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative.

(5) Pursuant to subdivision (i), evaluating administrators pursuant to the

evaluation procedures established by the governing board and, to the extent possible, to include faculty evaluation.

O) Pursuant to Education Code Section 87714, providing affidavits, at times required by the board of governors, that, during the 12 months preceding the execution of the affidavit, all academic employees of the district possessed the required minimum qualifications for the work they performed.

P) Pursuant to Education Code Section 87743.2, establishing and updating faculty service areas, within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals.

Q) Pursuant to Education Code Section 87743.3, receiving and determining faculty applications to add faculty service areas for which the faculty member qualifies.

R) Pursuant to Education Code Section 87743.3, classifying and procedurally addressing any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area. If the district has no grievance procedure, fair and equitable procedures for the resolution of the disputes shall be developed by the academic senate and representatives of the governing board.

S) Pursuant to Education Code Section 87743.4, maintaining a permanent record in each faculty member's personnel file, for each faculty member employed by the district of each faculty service area for which the faculty member possesses the

minimum qualifications for service and in which he or she has established competency pursuant to district competency standards.

T) Pursuant to Education Code Section 87743.5, establishing and updating competency criteria for faculty members employed by the district within the scope of meeting and negotiating pursuant to Section 3543 of the Government Code.

Title 5, California Code of Regulations Provisions

A) Pursuant to Title 5, California Code of Regulations, Section 53130, to adopt and cause to be printed, and made available to each academic employee of the district, reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

B) Pursuant to Title 5, California Code of Regulations, Section 53403, to establish and implement policies to recognize faculty who were qualified to teach in their respective disciplines under the minimum qualifications when he or she was employed.

C) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (a), determining whether applicants for college faculty or educational administrator positions have qualifications that are at least equivalent to the minimum conditions specified, including:

(1) Verification that all degrees and units used to satisfy minimum qualifications are from, accredited institutions, unless otherwise specified, as required by Title 5, California Code of Regulations, Section 53406.

(2) Verification of disciplines requiring a Master's Degree and those disciplines in which a Master's Degree is not generally expected or available by reference to publications and lists maintained by the Chancellor's office as required by Title 5, California Code of Regulations, Section 53407.

(3) Verification of the minimum qualifications for service as a community college faculty member teaching any credit course, or as a counselor or librarian as required by Title 5, California Code of Regulations, Section 53410.

(4) Verification of possession of a bachelor's degree in the discipline of the proposed assignment plus a professional license or certification as required by Title 5, California Code of Regulations, Section 53410.1.

(5) Verification of possession of the minimum qualifications for a faculty member teaching a noncredit course as required by Title 5, California Code of Regulations, Section 53412.

(6) Verification of possession of the minimum qualifications for a faculty member teaching disabled programs and services as required by Title 5, California Code of Regulations, Section 53414.

(7) Verification of possession of the minimum qualifications for a faculty member teaching as a learning assistance or learning skills coordinator or instructor, or tutoring coordinator as required by Title 5, California Code of Regulations, Section 53415.

(8) Verification of possession of the minimum qualifications for a faculty member instructing or coordinating general or occupational work experience education as required by Title 5, California Code of Regulations, Section 53416.

(9) Verification of possession of a current, valid certificate to work or a license to practice in California whenever the instructor's possession of such a certificate of license is required for program or course approval as required by Title 5, California Code of Regulations, Section 53417.

(10) Verification of possession of the minimum qualifications for service as an educational administrator as required by Title 5, California Code of Regulations, Section 53420.

D) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (b), developing and agreeing upon the process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty, jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty employed under the authority granted by this section possesses qualifications that are at least the equivalent to the applicable minimum qualifications specified in this Division.

E) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (c), the agreed upon process further requires that the academic senate be provided with an opportunity to present its views to the governing board before the governing board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review, pursuant to Education Code Section 87358.

F) Pursuant to Title 5, California Code of Regulations, Section 53430, subdivision (d), to be bound by the provisions of the subchapter until a joint agreement is reached and approved pursuant to subdivision (b).

It is estimated that the Santa Monica Community College District incurred more than $1,000 in staffing and other costs in excess of any funding provided to community college districts and the state for the period from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state for which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the

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foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED this 25 day of June, 2003, at Santa Monica, California.

Tom Donner
Executive Vice President - Business and Administration
Santa Monica Community College District

EXHIBIT 2
COPIES OF STATUTES CITED

Assembly Bill No. 1337

CHAPTER 124

An act to amend Section 87610.1 of the Education Code, relating to community college employees.

[Approved by Governor July 8, 2000. Filed with Secretary of State July 10, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, Havice. Public postsecondary education: community college faculty.

Under existing law, if a case concerning the granting of tenure of community college faculty proceeds to arbitration with representation by the exclusive representative, the resulting decision is not to be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead affects only the result in that particular case.

This bill would specify that the resulting decision is not to be considered a precedent as described above, and that it would affect only the result in that particular case, if the case proceeds to arbitration without, instead of with, representation by the exclusive representative.

The people of the State of California do enact as follows:

SECTION 1. Section 87610.1 of the Education Code is amended to read:

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

"Arbitration," as used in this section, refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration without representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

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SCHOOLS AND SCHOOL DISTRICTS—COMMUNITY COLLEGES—BOARD OF GOVERNORS

CHAPTER 1023

A.B. No. 2329

AN ACT to amend Section 70901 of the Education Code, and to amend Sections 10295, 10430, 12100.5, and 12120 of, and to add Sections 20661 and 20662 to, the Public Contract Code, relating to community colleges.

[Approved by Governor September 30, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2329, Firestone. Community colleges: contracts.

Under existing law, the Regents of the University of California and the Trustees of the California State University are not subject to laws governing contracts for the state procurement of materials, goods, supplies, or services, or for the acquisition of electronic data-processing and telecommunications goods and services, with certain exceptions. Under existing law, the trustees are required to develop policies and procedures that further expressed legislative policies for procurement without the involvement of the Department of Finance or the Department of General Services.

This bill would provide that the Board of Governors of the California Community Colleges is not subject to the laws described above, but would require the board to develop policies and procedures that further express legislative policies for procurement without the involvement of the Department of Finance or the Department of General Services.

Under existing law, Section 8 of Article XVI of the California Constitution (Proposition 98) sets forth a formula for computing the minimum amount of General Fund revenues that the state is required to appropriate for the support of school districts, as defined, and community college districts for each fiscal year.

The bill would authorize the Chancellor of the California Community Colleges to enter into a contract on behalf of one or more community college districts, subject to certain restrictions. The bill would require the chancellor to report to the Legislature and the Governor by

January 1, 2001, on contracts entered into pursuant to these provisions and any resultant cost savings. The bill would authorize the chancellor to enter into a contract with a community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community Colleges when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution. The bill would authorize the Board of Governors of the California Community Colleges to adopt regulations to implement the provisions of this paragraph.

This bill would incorporate additional changes in Section 10430 of the Public Contract Code proposed by SB 412, to be operative if SB 412 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 70901 of the Education Code is amended to read:

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general

apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

SEC. 2. Section 10295 of the Public Contract Code, as amended by Chapter 88 of the Statutes of 1998, is amended to read:

20661. (a) The Chancellor of the California Community Colleges is authorized to enter into a contract on behalf of one or more community college districts, subject to the following restrictions:

(1) No district may be required to participate in any contract entered into pursuant to this section.

(2) The cost to each district that is a party to or a beneficiary of a contract entered into pursuant to this section must be lower than the cost the district could obtain through its standard contracting procedures. No contract for the procurement of goods or services may be made when a bid has been received by a participating district for the procurement of the same goods or services unless the contract would result in a lower price for the goods or services upon the same terms, conditions, and specifications.

(3) The state shall not incur any financial responsibility in connection with a contract entered into pursuant to this section.

(b) The Chancellor of the California Community Colleges is authorized to charge a fee, commission, or other charge to either or both of the following:

(1) Each provider of goods or services under a contract entered into pursuant to this section.

(2) Each community college district that the chancellor enters into a contract on behalf of pursuant to this section.

(c) On or before January 1, 2001, the Chancellor of the California Community Colleges shall report to the Legislature and the Governor on contracts entered into pursuant to this section and any resultant cost savings.

(d) The Board of Governors of the California Community Colleges shall adopt regulations to implement this section.

SEC. 7. Section 20662 is added to the Public Contract Code, to read:

20662. The Chancellor of the California Community Colleges is authorized to enter into a contract or other agreement with the governing board of any community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community colleges. This section shall apply only when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 7.5. (a) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code applies to the Board of Governors of the California Community Colleges and to the Chancellor's Office of the California Community Colleges. The Legislature finds and declares that this subdivision is declaratory of existing law.

(b) Nothing in this act shall be construed to provide any exemption from Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code for the Board of Governors of the California Community Colleges or the Chancellor's Office of the California Community Colleges.

SEC. 8. It is the intent of the Legislature that this act will result in greater efficiency in the operation of the California Community Colleges.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 10430 of the Public Contract Code proposed by both this bill and SB 412. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 10430 of the Public Contract Code, and (3) this bill is enacted after SB 412, in which case Section 3 of this bill shall not become operative.

BILL NUMBER: AB 446 CHAPTERED 10/11/95

CHAPTER 758
FILED WITH SECRETARY OF STATE OCTOBER 11, 1995
APPROVED BY GOVERNOR OCTOBER 10, 1995
PASSED THE SENATE SEPTEMBER 15, 1995
PASSED THE ASSEMBLY SEPTEMBER 15, 1995
AMENDED IN SENATE SEPTEMBER 7, 1995
AMENDED IN SENATE AUGUST 21, 1995
AMENDED IN SENATE JULY 19, 1995
AMENDED IN SENATE JUNE 12, 1995
AMENDED IN ASSEMBLY MARCH 27, 1995

INTRODUCED BY Assembly Committee on Higher Education

FEBRUARY 16, 1995

An act to amend, repeal, and add Sections 28, 1247.6, 2902, 4939, 4980.40, and 18629 of the Business and Professions Code, to amend, repeal, and add Section 1812.501 of the Civil Code, to amend, repeal, and add Section 10251 of the Corporations Code, to amend Sections 1510, 8152, 12050, 12052, 12053, 12400, 66010, 66015, 66022, 66023, 66202.5, 66743, 66753.5, 66903, 66903.3, 67385, 67500, 68011, 68133, 69509, 69613, 69615.2, 69634, 69900, 69908, 71000, 71020.5, 71090.5, 72023.5, 72411.5, 72425, 72620, 74270, 76000, 76140, 76210, 76225, 76231, 76232, 76240, 76245, 76330, 76330.1, 76355, 76370, 76380, 76391, 78015, 78217, 79121, 81033, 81130.5, 81141, 81162, 81177, 81314, 81345, 81348, 81401, 81530, 81551, 81661, 81821, 84362, 84501, 84751, 84810.5, 84820, 85223, 85233, 85267, 87008, 87017, 87411, 87413, 87414, 87418, 87419, 87420, 87423, 87448, 87451, 87453, 87460, 87464, 87468, 87469, 87470, 87483, 87487, 87603, 87604, 87622, 87672, 87673, 87675, 87676, 87677, 87701, 87715, 87732, 87734, 87740, 87744, 87745, 87746, 87762, 87764, 87768.5, 87770, 87774, 87780, 87781, 87787, 87790, 87832, 88000, 88001, 88002, 88003, 88004.5, 88010, 88013, 88014, 88015, 88020, 88023, 88024, 88030, 88033, 88036, 88050, 88051, 88053, 88054, 88057, 88063.5, 88076, 88083, 88086.5, 88092, 88093, 88097, 88098, 88104, 88105, 88107, 88120, 88125, 88126, 88128, 88132, 88136, 88164, 88165, 88167, 88168, 88185, 88191, 88192, 88194, 88195, 88196, 88197, 88198, 88203, 88205, 88205.5, 88206, 88207, 88227, 88245, 88263, 89002, 89036, 89046, 89047, 89300, 89310, 89537, 92620, 99100, 99103, 99105, and 99106 of, to amend the heading of Article 1 (commencing with Section 10000) of Chapter 1 of Part 7 of, to amend the heading of Article 13 (commencing with Section 69760) of Chapter 2 of Part 42 of, to amend and renumber the heading of Part 43.5 (commencing with Section 70900) of, to amend, repeal, and add Sections 8092, 8092.5, 44227, 49073, 66170, 69509.5, 94050, and 94355 of, to add Sections 67359.9, 84756, 84757, and 84758 to, to add an article heading immediately preceding Section 92020 of, to add Article 12 (commencing with Section 44390) to Chapter 2 of Part 25 of, Article 6 (commencing with Section 66060) and Article 7 (commencing with Section 66070) to Chapter 2 of Part 40 of, and Article 6 (commencing with Section 89250) to Chapter 2 of Part 55 of, to add Chapter 11.3 (commencing with Section 66940) to Part 40 of, and Chapter 7 (commencing with Section 94700) to Part 59 of, to repeal Sections 8081, 8084, 12051, 12061, 66207, 66211, 66605.5, 66723, 66744, 66903.4, 66903.6, 67321, 67386, 67392, 69507.7, 69534, 69534.2, 69534.5, 69534.6, 69639, 69766.1, 72410, 76320, 76392, 78217, 78310, 87012, 87018, 87461, 87772, 87773, 87778, 88032, 88035.5, 88079.1, 89003, 89004, 89009, 89032, 89033, 89040, 89070.45, 89081, 89082, 89083, 89211, 89241, 89242, 89703, 92010, 92610, and

employee. "Unprofessional conduct" and "incompetency," as used in this section, means, and refers only to, the unprofessional conduct and incompetency particularly specified as a cause for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.

SEC. 168. Section 87740 of the Education Code is amended to read:

87740. (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of the notice may be deferred until the 45th day of employment and all time periods and deadline dates prescribed in this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing

board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt, from time to time, rules and procedures not inconsistent with this section that may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a contract employee for the ensuing college year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the colleges and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that the employee's service will not be required for the ensuing year shall be given no later than May 15.

(f) If a governing board notifies a contract employee that his or her services will not be required for the ensuing year, the board, within 10 days after delivery to it of the employee's written request, shall provide him or her with a statement of its reasons for not reemploying him or her for the ensuing college year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) If the governing board does not give notice provided for in subdivision (e) on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If, after request for hearing pursuant to subdivision (b), any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (c), (d), (e) and (h) that occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.

SEC. 169. Section 87744 of the Education Code is amended to read:

87744. Any regular employee whose services have been terminated, as provided in Section 87743, shall have the following rights:

(a) For the period of 39 months from the date of the termination, any employee who in the meantime has not attained the age of 70 years shall have the preferred right to reappointment, in the order of original employment as determined by the board in accordance with Sections 87405 to 87424, inclusive, if the number of employees is increased or the discontinued service is reestablished, with no requirements that were not imposed upon other employees who continued in service. However, no contract or other employee with less seniority shall be employed to render a service for which the employee meets minimum qualifications and is competent to render.

(b) The right to reappointment may be waived by the employee, without prejudice, for not more than one college year, unless the board extends this right, but such a waiver shall not deprive the employee of his or her right to subsequent offers of reappointment.

adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

SEC. 293.5. Section 633 is added to the Unemployment Insurance Code, to read:

633. (a) For purposes of coverage under Part 2 (commencing with Section 2601) of Division 1, "employment" does not include services performed as an intermittent or adjunct instructor at a postsecondary educational institution which meets the requirements of Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code if the intermittent or adjunct instructor and the employing unit enter a written contract with the following provisions:

(1) That any federal or state income tax liability shall be the responsibility of the party providing the services.

(2) That no disability insurance coverage is provided under the contract.

(3) That the party performing the services certifies that he or she is doing so as a secondary occupation or as a supplemental source of income.

(b) This section shall not apply to services performed under a collective bargaining agreement.

(c) This section shall become operative on January 1, 1997.

SEC. 294. Section 282 of this act shall become operative on January 1, 1997.

SEC. 295. (a) Except as provided in subdivision (b), any section of any act enacted by the Legislature during the **1995** calendar year that takes effect on or before January 1, 1996, and that amends, amends and renumbers, adds, repeals and adds, or repeals a provision amended, repealed, or added by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act.

(b) Subdivision (a) does not apply to any of the following:

(1) Section 2902 of the Business and Professions Code, as amended by Chapter 279 of the Statutes of **1995**.

(2) Section 4980.40 of the Business and Professions Code, as amended by Chapter 327 of the Statutes of **1995**.

(3) Section 72023.5 of the Education Code, as amended by Chapter 82 of the Statutes of **1995**.

CHAPTER 506

An act to amend Sections 87359 and 87615 of, and to add Sections 87356 and 81378.1 to, the Education Code, relating to postsecondary education.

[Approved by Governor September 26, 1993. Filed with Secretary of State September 27, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 81378.1 is added to the Education Code, to read:

81378.1. (a) The governing board of a community college district may, without complying with any other provision of this article, let in the name of the district any buildings, grounds, or space therein, together with any personal property located thereon, not needed for academic activities, upon the terms and conditions agreed upon by the governing board and the lessee for a period of more than five days but less than five years, as determined by the governing board. The fair market value of the lease of any buildings, grounds, or space therein, together with any personal property located thereon, let pursuant to this section shall not exceed twenty-five thousand dollars ($25,000) per year, as certified by the governing board. Prior to executing the lease, the governing board shall include in an agenda of a meeting of the board open to the public a description of the proposed lease and an explanation of the methodology used to establish the lease rate and for determining the fair market value of the lease.

(b) The governing board shall give public notice prior to taking any action pursuant to subdivision (a). The notice shall include a description of the governing board's intended action. The notice shall be printed once a week for three successive weeks prior to the board meeting described in subdivision (a) in a newspaper of general circulation that is published at least once a week.

(c) The governing board shall include as a condition in any agreement to let any buildings, grounds, or space therein, together with any personal property located thereon, a provision that the agreement shall be subject to renegotiation and may be rescinded after 60 days' notice to the lessee if the governing board determines at any time during the term of the agreement that the buildings, grounds, or space therein subject to the agreement are needed for academic activities. Any revenue derived pursuant to the agreement shall be retained for the exclusive use of the community college district whose buildings, grounds, or space therein are the basis of the agreement and shall be used to supplement, but not supplant, any state funding. Any buildings, grounds, or space therein, let by the district shall be included as space actually available for use by the college in any calculations related to any plan for capital construction submitted to the board of governors pursuant to Chapter 4 (commencing with Section 81800) or any other law.

(d) The authority of a governing board under this section does not apply to the letting of an entire campus.

(e) The use of any buildings, grounds, or space therein, together with any personal property located thereon, let by the governing board pursuant to this section shall be consistent with all applicable zoning ordinances and regulations.

SEC. 2. Section 87356 is added to the Education Code, to read:

87356. (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for service as a faculty member teaching credit instruction, a faculty member teaching noncredit instruction, a librarian, a counselor, an educational administrator, an extended opportunity programs and services worker, a disabled students programs and services worker, an apprenticeship instructor, and a supervisor of health.

(b) The Legislature finds and declares that this section does not create a state-mandated local program because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

SEC. 3. Section 87359 of the Education Code is amended to read:

87359. The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members and educational administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty

member or educational administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

SEC. 4. Section 87615 of the Education Code is amended to read:

87615. Commencing July 1, 1991, the minimum degree requirement for tenure as a community college faculty member shall be a bachelor's degree or equivalent from an accredited institution, or an equivalent foreign degree, except that in the case of vocational faculty, this requirement shall commence January 1, 1995, for persons hired on or after that date. The board of governors shall monitor the effects and anticipated effects of this provision upon hiring practices within the districts, analyze the results, and make a report and recommendation to the Legislature no later than January 1, 1994.

The governing board may grant tenure to faculty members who do not meet the minimum degree requirement for tenure specified in this section if both of the following conditions are met:

(a) The governing board determines that rare and compelling reasons exist justifying the action. The reasons for the governing board's determination shall be reflected in its action granting tenure to the individual.

(b) The process by which the governing board reaches the determination has been developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board

relies primarily upon the advice and judgment of the academic senate to determine that rare and compelling reasons exist to grant tenure. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

CHAPTER 1302

An act to amend Sections 22503, 87009, 87010, 87011, 87014, 87035, 87036, 87060, 87061, 87062, 87100, 87101, 87103, 87356, 87357, 87400, 87405, 87406, 87408, 87408.6, 87410, 87414, 87415, 87416, 87417, 87419.1, 87420, 87421, 87422, 87428, 87449, 87454, 87458, 87459, 87460, 87461, 87462, 87463, 87464, 87470, 87471, 87474, 87475, 87477, 87478, 87480, 87481, 87482, 87483, 87485, 87486, 87487, 87488, 87600, 87620, 87622, 87660, 87661, 87662, 87663, 87664, 87670, 87700, 87701, 87708, 87714, 87731, 87732, 87733, 87735, 87736, 87737, 87763, 87764, 87765, 87766, 87767, 87768, 87768.5, 87773, 87775, 87776, 87779, 87780, 87781, 87781.5, 87782, 87783, 87785, 87786, 87787, 87788, 87789, 87801, 87802, 87806, 87807, 87809, 87810, 87815, 87816, 87817, 87818, 87821, 87822, 87828, 87831, 87832, 87833, 87834, 88000, 88003, 88004, 88005, 88009, 88013, 88018, 88024, 88061, 88063.5, 88065, 88076, 88090, 88099, 88100, 88101, 88137, 88138, 88160, 88162, 88163, 88199, 88202, 88203, 88241, 88243, 88244, 88245, 88247, and 88261 of, to amend the headings of Article

a valid certificate issued by the appropriate California agency authorized by law to certify these persons.

(4) The qualifications for a dentist shall be a valid certificate issued by the Board of Dental Examiners of California.

(5) The qualifications for a dental hygenist shall be a valid certificate issued by the Board of Dental Examiners of California.

(6) The qualifications for a nurse shall be a valid certificate of registration issued by the Board of Nurse Examiners of the State of California or the California Board of Nursing Education and Nurse Registration.

(7) The qualifications for an optometrist shall be a valid certificate issued by the State Board of Optometry.

(8) The qualifications for an audiometrist working under the direction of health services personnel shall be a valid certificate or license issued by, or valid registration with, the California state agency authorized to issue the certificate or license, or to effect the registration required for the performance of the service.

(c) The Legislature finds and declares that this section does not create a state-mandated local program cost because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

SEC. 33. Section 87357 of the Education Code is amended to read:

87357. (a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, the board of governors shall consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate. With regard to minimum qualifications for educational administrators, the board of governors shall consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. With regard to minimum qualifications for apprenticeship instructors, the board of governors shall consult with, and rely primarily on the advice and judgment of, appropriate apprenticeship teaching faculty and labor organization representatives. In each case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) The board of governors shall establish a process to review at least every three years the continued appropriateness of the minimum qualifications, and the adequacy of the means by which they are administered. The process shall provide for the appointment of a representative group of community college faculty, administrators, students, and trustees to conduct or otherwise assist in the review, including particularly, representatives of academic senates, collective bargaining organizations, and statewide faculty associations. In addition, the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and representative of ethnic minority

communities.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for service.

SEC. 34. Section 87400 of the Education Code is amended to read:

87400. Governing boards of community college districts shall employ for academic positions, only persons who possess the qualifications therefor prescribed by regulation of the board of governors. It shall be contrary to the public policy of this state for any person or persons charged, by those governing boards, with the responsibility of recommending persons for employment by those boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of those applicants for that employment.

SEC. 35. Section 87401 of the Education Code is repealed.

SEC. 36. Section 87402 of the Education Code is repealed.

SEC. 37. Section 87405 of the Education Code is amended to read:

87405. (a) Governing boards of commmunity college districts shall not employ or retain in employment persons who have been convicted of any sex offense as defined in Section 87010 or controlled substance offense as defined in Section 87011. If, however, any such conviction is reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed, this section does not prohibit his or her employment thereafter.

(b) Notwithstanding subdivision (a), no person shall be denied employment or not be retained solely on the basis that he or she has been convicted of a sex offense or a controlled substance offense if he or she has obtained or applied for a certificate of rehabilitation and pardon under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, and if his or her probation has

Legislature shall be granted a leave of absence from his or her duties as an employee of the district by the governing board of the district.

During the term of the leave of absence, the employee may be employed by the district to perform less than full-time service, for compensation and upon terms and conditions, as may be mutually agreed upon.

This absence shall not affect in any way the classification of the employee.

Within six months after the term of office of the employee expires he or she shall be entitled to return to the position held by him at the time of his or her election, at the salary to which he or she would have been entitled had he or she not absented himself or herself from the service of the district under this section.

Notwithstanding any provision of this code to the contrary, a person employed to take the place of any such employee shall not have any right to the position following the return of the employee to the position.

This section shall apply to any permanent employee who held the office of Member of the Assembly or State Senator on or after January 4, 1965.

SEC. 121. Section 87708 of the Education Code is amended to read:

87708. (a) Every parent, guardian, or other person who assaults or abuses any academic employee in the presence or hearing of a community college student is guilty of a misdemeanor.

(b) Any parent, guardian, or other person who assaults or abuses any academic employee in the presence of other community college personnel or students and at a place which is on community college premises or public sidewalks, streets, or other public ways adjacent to school premises, or at some other place where the employee is required to be in connection with assigned college activities is guilty of a misdemeanor.

SEC. 122. Section 87714 of the Education Code is amended to read:

87714. The chief executive officer of each community college district shall, at times as required by the board of governors, provide an affidavit that, during the 12 months preceding the execution of the affidavit, all academic employees of the district possessed the required minimum qualifications for the work they performed.

SEC. 123. The heading of Article 6 (commencing with Section 87730) of Chapter 3 of Part 51 of the Education Code is amended to read:

Article 6. Termination of Services and Reduction in Force

SEC. 124. Section 87731 of the Education Code is amended to read:

87731. Whenever any academic employee of any community college district who, at the time of his or her resignation, was

and shall be subject to all of the rights, benefits, and burdens of the classified service, except as specified in Section 88005 for "restricted" positions.

SEC. 207. Section 88261 of the Education Code is amended to read:

88261. A community college district classified employee assigned to a data processing center which is transferred to a county superintendent of schools shall, upon the election of the employee to do so, cease to be an employee of the community college district upon the effective date of the agreement transferring the data processing center to the county superintendent of schools and shall thereafter be an employee of the county superintendent of schools and be paid from the county school service fund.

SEC. 207.5. Section 88.5 of this bill incorporates amendments to Section 87488 of the Education Code proposed by this bill and AB 2609. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1991, (2) each bill amends Section 87488 of the Education Code, and (3) this bill is enacted after AB 2609, in which case Section 87488 of the Education Code, as amended by AB 2609, shall remain operative only until the operative date of this bill, at which time Section 88.5 of this bill shall become operative, and Section 88 of this bill shall not become operative.

SEC. 208. Sections 95, 98, 99, 100, and 101 of this act shall become operative only if the conditions specified in subdivision (e) of Section 70 of Chapter 973 of the Statutes of 1988 have been fulfilled.

SEC. 209. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 210. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

This bill affects the fundamental rights of community college employees. In order for this act to become operative in 1990 with respect to these rights, it is necessary that this act take immediate effect.

CHAPTER 973

An act to amend Sections 66701, 71000, 71001, 78205, 84381, 84713, 87102, 87104, 87454, 87457, 87602, 87663, and 87743 of, to add Sections 71020.5, 71090.5, 78212.5, 84750, 84755, 87001, 87107, 87482.6, 87608.5, 87610.1, 87615, 87743.1, 87743.2, 87743.3, 87743.4, and 87743.5 to, to add Article 5 (commencing with Section 87150) to Chapter 1 of Part 51 of, to add Chapter 9.2 (commencing with Section 66720) to Part 40 of, and Chapter 2.5 (commencing with Section 87350) to Part 51 of, to add Part 43.5 (commencing with Section 70900) to Division 7 of, to repeal and add Sections 71020, 72411.5, 87458, 87605, 87608, 87609, 87610, and 87611 of, to repeal Sections 71023, 71025, 71026, 71027, 71028, 71062, 71063, 71064, 71066, 71068, 71069, 71070, 71071, 71072, 71073, 71075, 71076, 71079, 71080, 71091, 72201, 72230, 72231.5, 72233, 72282, 72284, 72285, 72286, 72287, 72288, 72289, 72290, 72291, 72292,

Trustees of the California State University, with appropriate consultation with the Academic Senates of the respective segments, shall jointly develop, maintain, and disseminate a common core curriculum in general education courses for the purposes of transfer. Any person who has successfully completed the transfer core curriculum, shall be deemed to have thereby completed all lower division general education requirements for the University of California and the California State University.

66721. Upon development of the transfer core curriculum pursuant to Section 66720, and upon any subsequent joint revision of that curriculum, the Board of Governors of the California Community Colleges, the Regents of the University of California, and the Trustees of the California State University shall jointly cause the curriculum to be published and distributed to each public school in this state that provides instruction in any of the grades 7 to 12, inclusive, and to each community college in this state, with an emphasis on the communication of that information to each school or college having a high proportion of students who are members of one or more ethnic minorities. In addition, the Board of Governors shall distribute that transfer core curriculum to the State Board of Education, which shall apply that information to ensure, through its curriculum development activities, that public school pupils enrolled in any of the grades 9 to 12, inclusive, are aware of the academic requirements for preparation for higher education and may receive any necessary academic remediation in a timely manner.

66723. No provision of this chapter shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, makes that provision applicable.

SEC. 8. Part 43.5 (commencing with Section 70900) is added to Division 7 of the Education Code, to read:

PART 43.5. THE CALIFORNIA COMMUNITY COLLEGES

70900. There is hereby created the California Community Colleges, a postsecondary education system consisting of community college districts heretofore and hereafter established pursuant to law and the Board of Governors of the California Community Colleges. The board of governors shall carry out the functions specified in Section 70901 and local districts shall carry out the functions specified in Section 70902.

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with

established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule

delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

70901.5. (a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements:

(1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government Code. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards.

(4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period.

(5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following:

(A) Reject or withdraw the regulation.

(B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly

adopted regulation, and shall go into effect in accordance with those procedures.

(C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges.

(6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost.

(7) Any district or other interested party may propose a new regulation or challenge any existing regulation.

(b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to regulations adopted by the board of governors.

70902. (a) Every community college district shall be under the control of a board of trustees, which is referred to herein as the "governing board." The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.

The governing board of each community college district shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the district.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

(1) Establish policies for, and approve, current and long-range academic and facilities plans and programs and promote orderly growth and development of the community colleges within the district. In so doing, the governing board shall, as required by law, establish policies for, develop, and approve, comprehensive plans. The governing board shall submit the comprehensive plans to the

board of governors for review and approval.

(2) Establish policies for and approve courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. Courses of instruction that are not offered in approved educational programs shall be submitted to the board of governors for approval. The governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.

(3) Establish academic standards, probation and dismissal and readmission policies, and graduation requirements not inconsistent with the minimum standards adopted by the board of governors.

(4) Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors and establish employment practices, salaries, and benefits for all employees not inconsistent with the laws of this state.

(5) To the extent authorized by law, determine and control the district's operational and capital outlay budgets. The district governing board shall determine the need for elections for override tax levies and bond measures and request that those elections be called.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(8) Establish rules and regulations governing student conduct.

(9) Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law.

(10) In its discretion, receive and administer gifts, grants, and scholarships.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

(12) Within the framework provided by law, determine the district's academic calendar, including the holidays it will observe.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(14) Participate in the consultation process established by the board of governors for the development and review of policy proposals.

(c) In carrying out the powers and duties specified in subdivision

(b) or other provisions of statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Wherever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation.

SEC. 9. Section 71000 of the Education Code is amended to read:

71000. There is in the state government a Board of Governors of the California Community Colleges, consisting of all of the following:

(a) Thirteen members, who are appointed by the Governor with the advice and consent of two-thirds of the Senate. Of the members appointed by the Governor, two shall be current or former elected members of local community college district governing boards. The Governor shall appoint the current or former members of the governing board of a community college district for staggered six-year terms. The voting members who are current or former members of the governing board of a community college district shall first be appointed no later than January 15, 1990, and January 15, 1992, respectively.

(b) One voting student who is enrolled in a community college with a minimum of five semester units, or its equivalent, at the time of the appointment and throughout the period of his or her term of appointment, or until a replacement has been named. A student member shall be enrolled in a community college at least one semester prior to his or her appointment and shall meet and maintain the minimum standards of scholarship prescribed for community college students. The student member shall be appointed by the Governor for a one-year term commencing on June 1.

(c) Two voting tenured faculty members from a community college, who shall be appointed by the Governor for two-year terms. The Governor shall appoint each faculty member from a list of names of at least three persons furnished by the Academic Senate of the California Community Colleges. The first voting tenured faculty member appointed to the board shall occupy the seat on the board that is made available by the next full-term vacancy of a four-year term that exists after January 1, 1984. The first voting tenured faculty member appointed to the additional voting tenured faculty member seat on the board provided by the amendments to this section enacted by the Statutes of 1987 shall occupy the second seat on the board that is made available by the next full-term vacancies that exist after January 1, 1988. Thereafter, each seat shall be designated as a

including, but not necessarily limited to, programs designed to develop self-esteem.

87154. This article shall be operative during any fiscal year only if funds are provided therefor in the annual Budget Act for that fiscal year or other legislation.

SEC. 27. Chapter 2 (commencing with Section 87200) of Part 51 of the Education Code is repealed.

SEC. 28. Chapter 2.5 (commencing with Section 87350) is added to Part 51 of the Education Code, to read:

CHAPTER 2.5. QUALIFICATIONS FOR COMMUNITY COLLEGE PERSONNEL

Article 1. General Provisions

87350. The plan for a new mechanism of faculty qualifications being developed by the Chancellor of the California Community Colleges pursuant to Chapter 1465 of the Statutes of 1986 shall include all of the following:

(a) A transition provision which would grandfather existing bargaining unit definitions.

(b) Consideration of projected California demographics.

(c) Consideration of affirmative action policies and programs.

Article 2. Minimum Qualifications and Hiring Criteria

87355. Any person employed under a credential as of June 30, 1990, including an instructor, librarian, counselor, student personnel worker, supervisor, administrator, or chief administrative officer, shall be entitled to serve under the terms of that credential until it terminates, and during the period the credential is effective, shall not be required to meet the minimum qualifications applicable after July 1, 1990. The board of governors shall adopt regulations as necessary to implement this exemption within 120 days of the effective date of this act.

87356. (a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as a community college faculty member. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as a community college faculty member teaching any credit course, as any of the following:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in the

discipline of the faculty member's assignment.

(3) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(A) Possession of a bachelor's degree from an accredited institution, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment, plus two years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(B) Possession of an associate degree from an accredited institution in a discipline reasonably related to the faculty member's assignment, plus six years of professional experience, plus appropriate certification to practice or licensure or its equivalent, if available.

(b) The board of governors shall adopt regulations establishing appropriate minimum qualifications for extended opportunity programs and services workers, pursuant to Section 69648.7.

(c) The board of governors shall adopt regulations establishing appropriate minimum qualifications for handicapped student programs and services workers, pursuant to Section 78440.5.

(d) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for hire as an instructional or student services administrator. Unless and until amended pursuant to the process described in Section 87357, the regulations shall establish the minimum qualifications for hire as an instructional or student services administrator as all of the following:

(1) Possession of a master's degree.

(2) One year of formal training, internship, or leadership experience reasonably related to the administrator's administrative assignment, which may, but need not be, concurrent with the required full-time service.

(e) The Legislature finds and declares that this section does not create a state-mandated local program cost because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

87357. (a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate, and with regard to minimum qualifications for instructional or student service administrators, consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. In either case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) The board of governors shall establish a process to review at least every three years the continued appropriateness of the

minimum qualifications, and the adequacy of the means by which they are administered. The process shall provide for the appointment of a representative group of community college faculty, administrators, students, and trustees to conduct or otherwise assist in the review, including particularly, representatives of academic senates, collective bargaining organizations, and statewide faculty associations. In addition, the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and representative of ethnic minority communities.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

87358. The board of governors shall periodically designate a team of community college faculty, administrators, and trustees to review each community college district's application of minimum qualifications to faculty and administrators.

87359. The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members, instructional administrators, and student services administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member, instructional administrator, or student services administrator under the authority granted by the regulations unless the governing board determines that he or she possesses

qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

87359.5. By May 1, 1989, the board of governors shall have reviewed or contracted for review of, the job relevance of the requirements of Sections 87408, 87408.5, 87408.6, and any other physical fitness tests or examinations, and other conditions of employment, applicable to community college personnel.

Article 3. Hiring Criteria

87360. (a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

(b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect.

SEC. 29. Section 87454 of the Education Code is amended to read:

87454. A tenured employee, when assigned from a faculty position to an administrative position, or assigned any special or other type of work, or given special classification or designation, shall retain his or her status as a tenured faculty member.

determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to paragraph (3) for the 1989–90 and 1990–91 fiscal years. To the extent that the cumulative number of FTF have not been retained, the chancellor shall reduce the district's base budget for 1991–92 and subsequent fiscal years by an amount equivalent to the average replacement cost times the deficiency in the number of FTF.

SEC. 36. Section 87602 of the Education Code is amended to read:

87602. For the purposes of other provisions of law:

(a) A contract employee is a probationary employee.

(b) A regular or tenured employee is a permanent employee.

SEC. 37. Section 87605 of the Education Code is repealed.

SEC. 38. Section 87605 is added to the Education Code, to read:

87605. The governing board of a district shall employ faculty for the first academic year of his or her employment by contract. Any person who, at the time an employment contract is offered to him or her by the district, is neither a tenured employee of the district nor a probationary employee then serving under a second or third contract entered into pursuant to Section 87608 shall be deemed to be employed for "the first academic year of his or her employment." A faculty member shall be deemed to have completed his or her first contract year if he or she provides service for 75 percent of the first academic year.

SEC. 39. Section 87608 of the Education Code is repealed.

SEC. 40. Section 87608 is added to the Education Code, to read:

87608. If a contract employee is working under his or her first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following academic year.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

SEC. 41. Section 87608.5 is added to the Education Code, to read:

87608.5. If a contract employee is working under his or her second contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following two academic years.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

SEC. 42. Section 87609 of the Education Code is repealed.

SEC. 43. Section 87609 is added to the Education Code, to read:

87609. If a contract employee is employed under his or her third consecutive contract entered into pursuant to Section 87608.5, the governing board shall elect one of the following alternatives:

(a) Employ the probationary employee as a tenured employee for all subsequent academic years.

(b) Not employ the probationary employee as a tenured employee.

SEC. 44. Section 87610 of the Education Code is repealed.

SEC. 45. Section 87610 is added to the Education Code, to read:

87610. (a) The governing board shall give written notice of its decision under Section 87608 or 87608.5 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her first or second contract shall be deemed an extension of the existing contract without change for the following academic year.

(b) The governing board shall give written notice of its decision under Section 87609 and the reasons therefor to the employee on or before March 15 of the last academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her third consecutive contract shall be deemed a decision to employ him or her as a regular employee for all subsequent academic years.

SEC. 46. Section 87610.1 is added to the Education Code, to read:

87610.1. (a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

Arbitration as used in this section refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to the provisions of subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances

to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration with respresentation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need not be limited to, back pay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

SEC. 47. Section 87611 of the Education Code is repealed.

SEC. 48. Section 87611 is added to the Education Code, to read:

87611. A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 49. Section 87615 is added to the Education Code, to read:

87615. Commencing July 1, 1990, the minimum degree requirement for tenure as a community college faculty member shall be a bachelor's degree or equivalent from an accredited institution, or an equivalent foreign degree, as determined by the board of governors, except that in the case of vocational faculty, this requirement shall commence January 1, 1994. The board of governors shall monitor the effects and anticipated effects of this provision upon hiring practices within the districts, analyze the

results, and make a report and recommendation to the Legislature no later than January 1, 1993.

The governing board may grant tenure to faculty members who do not meet the minimum degree requirement for tenure specified in this section if both of the following are met:

(a) The governing board determines that rare and compelling reasons exist justifying the action. The reasons for the governing board's determination shall be reflected in its action granting tenure to the individual.

(b) The process by which the governing board reaches the determination has been developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that rare and compelling reasons exist to grant tenure. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

SEC. 51. Section 87663 of the Education Code is amended to read:

87663. (a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a certificated employee by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall

consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.

(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation.

SEC. 51.5. Section 87743 of the Education Code is amended to read:

87743. No tenured employee shall be deprived of his or her position for causes other than those specified in Sections 87453, 87467, and 87484, and Sections 87732 to 87739, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of the district it shall have become necessary by reason of either of these conditions to decrease the number of tenured employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the employees of the district, tenured as well as probationary, at the close of the school year. However, the services of no tenured employee may be terminated under this section while any probationary employee, or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district maintained pursuant to Section 87743.4 reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

Notice of the termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of the employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 87413 and 87414. In the event that a tenured or probationary employee is not

given the notices and a right to a hearing as provided for in Section 87740, he or she shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

SEC. 52. Section 87743.1 is added to the Education Code, to read:

87743.1. As used in this chapter, "faculty service area" means a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district.

SEC. 53. Section 87743.2 is added to the Education Code, to read:

87743.2. Not later than July 1, 1990, each community college district shall establish faculty service areas. The establishment of faculty service areas shall be within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals.

SEC. 54. Section 87743.3 is added to the Education Code, to read:

87743.3. Each faculty member shall qualify for one or more faculty service areas at the time of initial employment. A faculty member shall be eligible for qualification in any faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. The application shall be received by the district on or before February 15 in order to be considered in any proceeding pursuant to Section 87743 during the academic year in which the application is received. Any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance. If the district has no grievance procedure, fair and equitable procedures for the resolution of the disputes shall be developed by the academic senate and representatives of the governing board.

SEC. 55. Section 87743.4 is added to the Education Code, to read:

87743.4. Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards. The record shall be contained in the faculty member's personnel file.

SEC. 56. Section 87743.5 is added to the Education Code, to read:

87743.5. To determine competency to serve in a faculty service area for the purposes of Section 87743, each community college district shall, not later than July 1, 1990, establish competency criteria for faculty members employed by the district. The development and establishment of such competency criteria shall be within the scope of meeting and negotiating pursuant to Section 3543 of the

Government Code.

SEC. 57. The Board of Governors of the California Community Colleges shall conduct a thorough review of all statutes affecting the administration and operation of the California Community Colleges, and recommend to the Legislature the amendment or repeal of those provisions affected by this act. The review shall be submitted to the Legislature no later than January 31, 1989.

SEC. 58. The Board of Governors of the California Community Colleges shall review the Education Employment Relations Act, Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, with regard to the delineation of roles and responsibilities of the academic senate and the faculty bargaining agents, especially in light of proposed changes in the role of faculty concerning hiring, peer review and evaluation, and curricular design. The results of this review including the recommendations of the board of governors shall be submitted to the Legislature no later than January 1, 1993. The board of governors shall convene a committee, for the purpose of conducting the review. The committee shall include representatives from faculty and employee groups, collective bargaining organizations, and academic senates.

This section shall become operative only if funds are specifically appropriated to the board of governors for purposes of this section.

SEC. 59. The California Postsecondary Education Commission and the State Department of Education shall jointly agree on a coordinated research framework to be utilized by each agency in a review of the programs in English as a second language offered through the California Community Colleges, the University of California, the California State University, and adult education programs, and of the future educational needs in this area, and to report its recommendations for programs of effective cooperation between those institutions in this respect. The California Postsecondary Education Commission shall have responsibility for reviewing the programs of the postsecondary segments and the State Department of Education shall have responsibility for reviewing the programs offered by school districts. Both the commission and the State Department of Education shall report the results of their review to the Legislature no later than January 1, 1990. The purpose of the study provided for under this section shall be to assess the ongoing role of the California Community Colleges, in relation to the respective roles of the University of California and the California State University in conducting programs in English as a second language.

This section shall become operative only if funds are specifically appropriated for the purposes of conducting the work specified in this section.

SEC. 60. The Chancellor of the California Community Colleges shall conduct a study, with the participation of one or more community college districts, on the feasibility of establishing, on a

board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase II of transitional program improvement and for any applicable state mandates, as authorized in Section 84755. If the board of governors so certifies, each of these sections shall be implemented on the date of certification, or upon any operative date specified for the particular section in this act, whichever is later. For purposes of this subdivision, "adequate funding" means those moneys required to provide an increased quality of instruction and programs, and to carry out applicable state mandates of this act, within the California Community Colleges. Based upon estimates provided by the board of governors and exhaustive review of the community colleges' operations by the Joint Committee for the Review of the Master Plan for Higher Education, the Legislature finds and declares that its estimate of this funding amount is seventy million dollars ($70,000,000), in addition to the seventy million dollars ($70,000,000) estimated under subdivision (d).

(f) Notwithstanding this section, the board of governors, commencing January 1, 1989, may develop criteria and standards, as may be necessary to prepare for implementation of Section 84750 of the Education Code. However, the board of governors may not implement that section until the terms of this section have been met.

SEC. 71. Section 70901.5 of the Education Code, as added by Section 8 of this act, shall become operative on January 1, 1990.

SEC. 72. The sum of seven million two hundred fifty thousand dollars ($7,250,000) is hereby appropriated from the General Fund to the Board of Governors of the California Community Colleges for expenditure pursuant to this act in the 1988–89 fiscal year in accordance with the following schedule:

(a) For expenditure pursuant to Article 5 (commencing with Section 87150) of Chapter 1 of Part 51 of the Education Code. Notwithstanding subdivision (a) of Section 87152, the board of governors shall allocate these funds to community college districts on a per average daily attendance (ADA) basis, using the funded ADA levels for the 1987–88 fiscal year, so that seven dollars ($7) per ADA, or as near thereto as possible, is allocated, and so that each district receives at least five thousand dollars ($5,000). Before computing the per ADA amount the board of governors may set aside up to 2 percent of the allocation of this subdivision for statewide administration	$5,000,000
(b) For expenditure pursuant to Section 87107 of the Education Code	$1,000,000
(c) For purposes of the administration of this act, including the administration of Section 84755 of	

	the Education Code, the adoption of regulations as required by Sections 70901.5, 87356, 87359, 87107, and 87482.6 of the Education Code and Section 69 of this act, the development of a list of disciplines, as required by Section 87357 of the Education Code, and the review required by Section 87359.5 of the Education Code	$300,000
(d)	For purposes of commencing implementation of Section 84750 of the Education Code, during the period of January 1, 1989, through June 30, 1990	$300,000
(e)	For purposes of subdivision (b) of Section 87104 of the Education Code	$300,000
(f)	For purposes of Section 71020.5 of the Education Code	$150,000
(g)	To the Community College Fund for instructional improvement pursuant to Section 84381 of the Education Code	$200,000

CHAPTER 470

An act to amend Sections 1256, 1257, 1264, 1265, 1330, 2400, 2509, 10401, 10407, 32020, 32030, 32040, 32044, 32211, 66803, 71060, 72002, 72020, 72030, 72122, 72126, 72129, 72237, 72280, 72300, 72330, 72331, 72332, 72400, 72401, 72408, 72533, 72601, 72602, 72670, 72673, 72682, 76000, 76001, 76002, 76130, 76160, 78005, 78008, 78030, 78031, 78032, 78033, 78204, 78409, 78907, 79000, 79020, 79021, 79022, 79023, 79024, 79025, 79026, 79027.5, 79028, 79030, 79031, 81000, 81006, 81031, 81033, 81033.5, 81035, 81036, 81038, 81144, 81179, 81452, 81457, 81640, 81648, 81657, 81658, 81821, 82530, 82531, 82535, 82536, 82537, 82538, 82541, 82542, 82543, 82544, 84300, 84362, 84370, 84373, 84500, 84520, 84528, 85000, 85003, 85022, 85200, 85201, 85266, 85442, 87032, 87036, 87039, 87212, 87274, 87408.5, 87409, 87422, 87423, 87424, 87428, 87454, 87455, 87456, 87457, 87458, 87484, 87708, 87732, 87733, 87735, 87744, 87745, 87801, 87808, 87828, 88000, 88240, and 88242 of, to amend the heading of Chapter 8 (commencing with Section 79000) of Part 48 of, to add Sections 8085, 71029, 78002, 78200.5, 78270, 78460, 81130.5, 87406.5, 87408.6, 88008, and 88010.5 to, to add Article 2 (commencing with

dollars ($250) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance.

SEC. 255. Section 81658 of the Education Code is amended to read:

81658. If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 81640 or 81649, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

SEC. 256. Section 81821 of the Education Code is amended to read:

81821. The five-year plan for capital construction shall set out the estimated capital construction needs of the district with reference to elements including at least all of the following:

(a) The plans of the district concerning its future academic and student services programs, and the effect on estimated construction needs which may arise because of particular courses of instruction or subject matter areas or student services to be emphasized.

(b) The enrollment projections for each district formulated by the Department of Finance, expressed in terms of weekly student contact hours. The enrollment projections for each individual college and educational center within a district shall be made cooperatively by the Department of Finance and the community college district.

(c) The current enrollment capacity of the district expressed in terms of weekly student contact hours and based upon the space and utilization standards for community college classrooms and laboratories adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(d) District office, library, and supporting facility capacities as derived from the physical plant standards for office, library, and supporting facilities adopted by the board of governors in consultation with the California Postsecondary Education Commission and consistent with its standards.

(e) An annual inventory of all facilities and land of the district using standard definitions, forms, and instructions adopted by the board of governors.

are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 70901. Board of governors; duties; rules and regulations; delegation; consultation

(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

(Amended by Stats.1998, c. 1023 (A.B.2329), § 1.)

§ 87356. Faculty members and specified employees; regulation adoption; state-mandated local program

(a) The board of governors shall adopt regulations to establish and maintain the minimum qualifications for service as a faculty member teaching credit instruction, a faculty member teaching noncredit instruction, a librarian, a counselor, an educational administrator, an extended opportunity programs and services worker, a disabled students programs and services worker, an apprenticeship instructor, and a supervisor of health.

(b) The Legislature finds and declares that this section does not create a state-mandated local program because compensation of faculty will continue to be determined through the collective bargaining process or meet and confer sessions.

(Added by Stats.1993, c. 506 (S.B.343), § 2.)

§ 87357. Minimum qualifications; establishment and maintenance; "discipline"; definition and recommendations

(a) In establishing and maintaining minimum qualifications pursuant to Section 87356, the board of governors shall do all of the following:

(1) With regard to minimum qualifications for faculty, the board of governors shall consult with, and rely primarily on the advice and judgment of, the statewide Academic Senate. With regard to minimum qualifications for educational administrators, the board of governors shall consult with, and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators. With regard to minimum qualifications for apprenticeship instructors, the board of governors shall consult with, and rely primarily on the advice and judgment of, appropriate apprenticeship teaching faculty and labor organization representatives. In each case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups.

(2) The board of governors shall establish a process to review at least every three years the continued appropriateness of the minimum qualifications, and the adequacy of the means by which they are administered. The process shall provide for the appointment of a representative group of community college faculty, administrators, students, and trustees to conduct or otherwise assist in the review, including particularly, representatives of academic senates, collective bargaining organizations, and statewide faculty associations. In addition, the group shall be broadly representative of academic and vocational programs in the curriculum from both urban and rural districts, and representative of ethnic minority communities.

(b) The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prescribe by regulation a working definition of the term "discipline" and shall prepare and maintain a list of disciplines that are "reasonably related" to one another, as that phrase is used in the minimum qualifications. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for hire.

In formulating advice and recommendations to the board of governors regarding the definition of the term "discipline," the statewide Academic Senate shall consult with appropriate statewide organizations representing administrators and faculty collective bargaining agents. The statewide Academic Senate shall incorporate the advice of those groups into its recommendations to the board of governors, particularly as it relates to the practical ramifications of any proposed definition of the term "discipline" on issues of reassignment, transfer, and reduction in force.

The board of governors, relying primarily upon the advice and judgment of the statewide Academic Senate, shall prepare and maintain a list of disciplines in which the master's degree is not generally expected or available. The initial list shall be distributed to the community college districts by July 1, 1989, for their use in applying the minimum qualifications for service.

(Added by Stats.1988, c. 973, § 28. Amended by Stats.1990, c. 1302 (S.B.2298), § 33, eff. Sept. 25, 1990.)

§ 87358. Review of districts' application of minimum qualifications

The board of governors shall periodically designate a team of community college faculty, administrators, and trustees to review each community college district's application of minimum qualifications to faculty and administrators.

(Added by Stats.1988, c. 973, § 28.)

§ 87359. Employment of faculty and administrators not meeting applicable minimum qualifications; process

The board of governors shall adopt regulations setting forth a process authorizing local governing boards to employ faculty members and educational administrators who do not meet the applicable minimum qualifications specified in the regulations adopted by the board of governors pursuant to Section 87356. Unless and until amended pursuant to the process described in Section 87357, the regulations shall require all of the following:

(a) No one may be hired to serve as a community college faculty member or educational administrator under the authority granted by the regulations unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination, and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.

(Added by Stats.1988, c. 973, § 28. Amended by Stats.1993, c. 506 (S.B.343), § 3.)

§ 87360. Development of criteria; inclusions; agreement; process in effect prior to agreement; times

(a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.

(b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.

(c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect.

(Added by Stats.1988, c. 973, § 28.)

§ 87610.1. Collective bargaining; grievances; arbitration powers of arbitrator; employees not deemed supervisory or managerial

(a) In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.

(b) Allegations that the community college district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. Allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.

"Arbitration," as used in this section, refers to advisory arbitration, as well as final and binding arbitration.

(c) Any grievance brought pursuant to subdivision (b) may be filed by an employee on his or her behalf, or by the exclusive bargaining representative on behalf of an employee or a group of employees in accordance with Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. The exclusive representative shall have no duty of fair representation with respect to taking any of these grievances to arbitration, and the employee shall be entitled to pursue a matter to arbitration with or without the representation by the exclusive representative. However, if a case proceeds to arbitration without representation by the exclusive representative, the resulting decision shall not be considered a precedent for purposes of interpreting tenure procedures and policies, or the collective bargaining agreement, but instead shall affect only the result in that particular case. When arbitrations are not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designated in the collective bargaining agreement, adequate security to pay the employee's share of the cost of arbitration.

(d) The arbitrator shall be without power to grant tenure, except for failure to give notice on or before March 15 pursuant to subdivision (b) of Section 87610. The arbitrator may issue an appropriate make-whole remedy, which may include, but need not be limited to, backpay and benefits, reemployment in a probationary position, and reconsideration. Procedures for reconsideration of decisions not to grant tenure shall be agreed to by the governing board and the exclusive representative of faculty pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(e) Any employees who are primarily engaged in faculty or other bargaining unit duties, who perform "supervisory" or "management" duties incidental to their performance of primary professional duties shall not be deemed supervisory or managerial employees as those terms are defined in Section 3540.1 of the Government Code, because of those duties. These duties include, but are not limited to, serving on hiring, selection, promotion, evaluation, budget development, and affirmative action committees, and making effective recommendations in connection with these activities. These employees whose duties are substantially similar to those of their fellow bargaining unit members shall not be considered supervisory or management employees.

(Added by Stats.1988, c. 973, § 46. Amended by Stats.2000, c. 124 (A.B.1337), § 1.)

§ 87611. Judicial review

A final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1 shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(Added by Stats.1988, c. 973, § 48.)

§ 87663. Frequency; standards and procedures

(a) Contract employees shall be evaluated at least once in each academic year. Regular employees shall be evaluated at least once in every three academic years. Temporary employees shall be evaluated within the first year of employment. Thereafter, evaluation shall be at least once every six regular semesters, or once every nine regular quarters, as applicable.

(b) Whenever an evaluation is required of a faculty member by a community college district, the evaluation shall be conducted in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.

(c) Evaluations shall include, but not be limited to, a peer review process.

(d) The peer review process shall be on a departmental or divisional basis, and shall address the forthcoming demographics of California, and the principles of affirmative action. The process shall require that the peers reviewing are both representative of the diversity of California and sensitive to affirmative action concerns, all without compromising quality and excellence in teaching.

(e) The Legislature recognizes that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

(f) In those districts where faculty evaluation procedures are collectively bargained, the faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

(g) It is the intent of the Legislature that faculty evaluation include, to the extent practicable, student evaluation.

(h) A probationary faculty member shall be accorded the right to be evaluated under clear, fair, and equitable evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative. Those procedures shall ensure good-faith treatment of the probationary faculty member without according him or her de facto tenure rights.

(i) Governing boards shall establish and disseminate written evaluation procedures for administrators. It is the intent of the Legislature that evaluation of administrators include, to the extent possible, faculty evaluation.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1988, c. 973, § 51; Stats.1990, c. 1302 (S.B.2298), § 114, eff. Sept. 25, 1990.)

§ 87714. Affidavit of qualification

The chief executive officer of each community college district shall, at times as required by the board of governors, provide an affidavit that, during the 12 months preceding the execution of the affidavit, all academic employees of the district possessed the required minimum qualifications for the work they performed.

(Added by Stats.1981, c. 470, p. 1793, § 382.5. Amended by Stats.1990, c. 1302 (S.B.2298), § 122, eff. Sept. 25, 1990.)

§ 87740. Notice of intention not to reemploy; hearing; determination

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of the notice may be deferred until the 45th day of employment and all time periods and deadline dates prescribed in this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the colleges and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt, from time to time, rules and procedures not inconsistent with this section that may be necessary to effectuate this section.

§ 87740

(d) The governing board's determination not to reemploy a contract employee for the ensuing college year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the colleges and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that the employee's service will not be required for the ensuing year shall be given no later than May 15.

(f) If a governing board notifies a contract employee that his or her services will not be required for the ensuing year, the board, within 10 days after delivery to it of the employee's written request, shall provide him or her with a statement of its reasons for not reemploying him or her for the ensuing college year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) If the governing board does not give notice provided for in subdivision (e) on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If, after request for hearing pursuant to subdivision (b), any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (c), (d), (e) and (h) that occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.

(Stats.1976, c. 1010, § 2, operative April 30, 1977. Amended by Stats.1985, c. 324, § 12; Stats.1995, c. 758 (A.B.446), § 168.)

§ 87743.2. Establishment of faculty service areas

Not later than July 1, 1990, each community college district shall establish faculty service areas. The establishment of faculty service areas shall be within the scope of meeting and negotiating pursuant to Section 3543.2 of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals.

(Added by Stats.1988, c. 973, § 53.)

§ 87743.3. Qualifying for faculty service area required at initial employment; eligibility; applications to add areas; disputes; grievances; procedure

Each faculty member shall qualify for one or more faculty service areas at the time of initial employment. A faculty member shall be eligible for qualification in any faculty service area in which the faculty member has met both minimum qualifications pursuant to Section 87356 and district competency standards. After initial employment, a faculty member may apply to the district to add faculty service areas for which the faculty member qualifies. The application shall be received by the district on or before February 15 in order to be considered in any proceeding pursuant to Section 87743 during the academic year in which the application is received. Any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area shall be classified and procedurally addressed as a grievance. If the district has no grievance procedure, fair and equitable procedures for the resolution of the disputes shall be developed by the academic senate and representatives of the governing board.

(Added by Stats.1988, c. 973, § 54.)

§ 87743.4. Faculty service areas; qualified faculty; permanent records

Each district shall maintain a permanent record for each faculty member employed by the district of each faculty service area for which the faculty member possesses the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards. The record shall be contained in the faculty member's personnel file.

(Added by Stats.1988, c. 973, § 55.)

§ 87743.5. Faculty service areas; competency criteria

To determine competency to serve in a faculty service area for the purposes of Section 87743, each community college district shall, not later than July 1, 1990, establish competency criteria for faculty members employed by the district. The development and establishment of such competency criteria shall be within the scope of meeting and negotiating pursuant to Section 3543 of the Government Code.

(Added by Stats.1988, c. 973, § 56.)

EXHIBIT 4
COPIES OF REGULATIONS

Article 1.6. Evaluation of Academic Employees

§ 53130. Availability of Rules and Regulations for Evaluation of Performance.

The governing board of a community college district shall adopt and cause to be printed and made available to each academic employee of the district reasonable rules and regulations providing for the evaluation of the performance of academic employees in their assigned duties.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3–4–91 by the Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. New article 1.6 heading filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
3. Editorial correction of HISTORY 1 (Register 95, No. 19).

Article 2. Academic Senates

§ 53200. Definitions.

For the purpose of this Subchapter:

(a) "Faculty" means those employees of a community college district who are employed in positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code, and for which minimum qualifications for hire are specified by the Board of Governors.

(b) "Academic senate," "faculty council," and "faculty senate" means an organization formed in accordance with the provisions of this Subchapter whose primary function, as the representative of the faculty, is to make recommendations to the administration of a college and to the governing board of a district with respect to academic and professional matters. For purposes of this Subchapter, reference to the term "academic senate" also constitutes reference to "faculty council" or "faculty senate."

(c) "Academic and professional matters" means the following policy development and implementation matters:

(1) curriculum, including establishing prerequisites and placing courses within disciplines;

(2) degree and certificate requirements;

(3) grading policies;

(4) educational program development;

(5) standards or policies regarding student preparation and success;

(6) district and college governance structures, as related to faculty roles;

[The next page is 325.]

boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

NOTE: Authority cited: Sections 66700 and 70901 Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Repealer and new section filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b). For prior history, see Register 83, No.18.
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53205. Duties Assigned by Administration and Governing Board.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 71079, Education Code. Reference: Sections 71079 and 72292, Education Code.

HISTORY

1. Amendment filed 1-16-81; effective thirtieth day thereafter (Register 81, No. 3).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No.18).
3. Repealer filed 10-30-90 with Secretary of State by Board of Governors, California Community Colleges; operative 11-30-90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).

§ 53206. Academic Senate for California Community Colleges.

(a) An Academic Senate for the California Community Colleges has been established through ratification by local academic senates or faculty councils so that the community college faculty of California may have a formal and effective procedure for participating in the formation of state policies on academic and professional matters.

(b) The Board of Governors recognizes the Academic Senate of the California Community Colleges as the representative of community college academic senates or faculty councils before the Board of Governors and Chancellor's Office.

NOTE: Authority cited: Sections 66700, 70901, and 71079, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 5-9-78; effective thirtieth day thereafter (Register 78, No. 19).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
4. Amendment of subsection (a) filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
5. Editorial correction of HISTORY 3 (Register 95, No. 19).

§ 53207. Reimbursement for Release or Reassigned Time.

(a) Except as provided in subdivisions (d) and (e), the faculty members elected to serve as president and vice president of the Academic Senate of the California Community Colleges (ASCCC) shall be granted release or reassigned time from their local responsibilities by the districts by which they are employed during their terms of office.

(b) The amount of release or reassigned time required will be determined by the ASCCC and reported to the district employing the person elected ASCCC president by May 1st and to the district employing the person elected ASCC vice president by June 1st of the year in which these individuals will assume office, unless the election has not been conducted by those dates, in which case the information will be reported immediately upon completion of the election.

(c) The districts employing the president and the vice president of the ASCCC will be reimbursed by February 1 from the state appropriation for the ASCCC for the release or reassigned time at the part-time replacement cost identified by the district prior to September of each year. If the release or reassigned time need identified is 100 percent and the position to be filled is in a hard to replace discipline area, the district shall so certify to the Chancellor of the California Community Colleges by August 1. If the Chancellor confirms the district certification, the district shall be reimbursed at the full-time temporary replacement cost. In addition, districts shall be reimbursed by the ASCCC for reasonable and documented administrative costs associated with hiring faculty to replace the faculty serving as president and vice president of the ASCCC.

(d) A local district will not be required to grant release or reassigned time for the president or vice president of the ASCCC if it certifies by August 1 to the Chancellor, and he or she confirms, that the faculty member is in a position for which a qualified part-time or full-time temporary replacement cannot be found to meet the needs of the students.

(e) No district shall be required to grant release or reassigned time for an individual serving as president or vice president of the ASCCC for a period exceeding four years.

(f) This section shall only be operative during any fiscal year in which sufficient funds are provided therefore to the ASCCC in the annual Budget Act for that fiscal year or other legislation.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. New section filed 3-12-2003; operative 4-11-2003. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 2003, No. 18).

Subchapter 3. Full-Time and Part-Time Faculty

Article 1. Scope and Definitions

§ 53300. Scope.

This Subchapter relates to and should be read in conjunction with the requirements of Section 51025 concerning the proportion of full-time and part-time faculty to be employed by community colleges.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Editorial correction of printing error in subchapter 3 heading (Register 91, No. 31).
3. Amendment filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
4. Repealer and new section and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
5. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
6. Amendment filed 3-25-98; operative 4-24-98. Submitted to OAL for printing only (Register 98, No. 14).

§ 53301. Part-Time Faculty.

The term "part-time faculty" includes any faculty member, as defined in Section 53402(c), who is not a regular employee or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5, or 87609 of the Education Code.

NOTE: Authority cited: Sections 66700, 70901, 84750 and 87482.7, Education Code. Reference: Sections 84750, 87482.7, 87601, 87605, 87608, 87608.5 and 87609, Education Code.

HISTORY

1. New section filed 6-23-2000; operative 7-23-2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53302. Full-Time Faculty.

For purposes of this Chapter the term "full-time faculty" means any faculty member, as defined in Section 53402(c), who is a regular or contract employee of the district pursuant to Sections 87601, 87605, 87608, 87608.5 or 87609 of the Education Code.

part–time instructors times the statewide average full–time teaching load).

(c) If the quotient determined in paragraph (b) is not a whole number, then the quotient shall be rounded down to the nearest whole number. If the quotient, once applied, will result in the district exceeding the 75 percent standard, the Chancellor shall further reduce the quotient to a whole number that will leave the district as close as possible to, but in excess of, the 75 percent standard.

(d) The computation for the funded growth in full–time equivalent student workload obligation to secure additional full–time faculty shall, when required pursuant to the provisions of Section 51025(a)(1) and (e), be made by multiplying the percentage of funded credit FTES growth times the base number of full–time faculty that were to be in place by Fall of the current year.

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (c) and NOTE and new subsection (d) filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment of subsection (a) filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

§ 53314. Report to Districts.

By the Spring term of each year, the Chancellor shall report to districts the estimated number of full–time faculty each district must secure by the following Fall term based upon the appropriation of revenues contained in that year's Budget Act and the Board of Governors' action pursuant to Section 51025(e).

NOTE: Authority cited: Sections 66700, 70901 and 87482.7, Education Code. Reference: Sections 84750 and 87482.7, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Repealer and new section and amendment of NOTE filed 8–19–92; operative 9–18–92 (Register 92, No. 34).
3. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
4. Amendment filed 6–23–2000; operative 7–23–2000. Submitted to OAL for printing only (Register 2000, No. 26).

Article 3. Enforcement

§ 53320. Funding Reductions.

NOTE: Authority cited: Sections 66700, 70901 and 87482.6, Education Code. Reference: Section 87482.6, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Repealer filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter are effective July 1, 1990.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356 and 87359, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Amendment filed 5–15–93; operative 6–4–93 (Register 93, No. 25).
4. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53401. Applicability to Community Services and Contract Classes.

Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this Subchapter. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.

NOTE: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

HISTORY

1. New section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions that are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410–53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisorial, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).

§ 53403. Applicability of Amendments.

Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Every person authorized to serve under a credential shall retain the right to serve under the terms of that credential, and, for that purpose, shall be deemed to possess the minimum qualifications specified for every discipline or service covered by the credential until the expiration of that credential. However, a credential shall be invalid when the holder has been convicted of any crime that, under former law, would have been

mandatory grounds for revocation, or when the Chancellor's Office has determined that the credential was obtained by fraud.

NOTE: Authority cited: Sections 70901, 87355 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87355 and 87356, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. New second paragraph and amendment of NOTE filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53404. Definition of Experience.

Where years of professional or occupational experience are referred to in this Subchapter, the requirement is for the stated number of years of full-time experience or the equivalent in part-time experience. Unpaid experience may be counted if it entailed responsibilities substantially similar to those of relevant paid positions in the field. Applicants bear the responsibility for verifying all experience by documentation satisfactory to the districts.

As used in this Subchapter, "professional experience" includes teaching experience. "Occupational experience" does not include teaching experience.

As used in this Section, "year" means that period of time which in that occupation is accepted by contract or general agreement as a regular work year for that occupation on a full-time basis.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 6-26-92; operative 7-27-92 (Register 92, No. 26).
2. Amendment of section and NOTE filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).
3. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53405. Certificated Employees.

Whenever in this Division, reference is made to "certificated employees" or to employees in "positions with certification qualifications," where such references are to certificates or credentials issued by the Board of Governors, these references are deemed to also apply to persons employed by districts pursuant to minimum qualifications established pursuant to Subchapter 4 of this Division.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53406. Requirement for Accredited Degrees and Units; Definition of Accredited Institution.

All degrees and units used to satisfy minimum qualifications shall be from accredited institutions, unless otherwise specified in this Article.

For purposes of this Subchapter, "accredited institution" shall mean a postsecondary institution accredited by an accreditation agency recognized by either the U.S. Department of Education or the Council on Postsecondary Accreditation. It shall not mean an institution "approved" by the California Department of Education or by the California Council for Private Postsecondary and Vocational Education.

Determination of equivalency of foreign degrees shall be according to district rule.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).
2. Amendment filed 9-6-94; operative 10-6-94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 53407. Disciplines Lists.

The Board of Governors hereby adopts and incorporates by reference into this provision the two lists published by the Chancellor's Office, entitled "Disciplines Requiring the Master's Degree" and "Disciplines in which the Master's Degree is not Generally Expected or Available," as revised September 1993, for the following purposes:

(1) to establish a working definition of the term "discipline" as used in Section 53410;

(2) to define which disciplines are "reasonably related" to one another, for purposes of Section 53410;

(3) to define disciplines in which the master's degree is not generally expected or available, as opposed to those for which the master's degree is required, for purposes of Section 53410.

NOTE: Authority cited: Sections 70901, 87356 and 87357, Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses, Counselors, and Librarians.

The minimum qualifications for service as a community college faculty member teaching any credit course, or as a counselor or librarian, shall be satisfied by meeting any one of the following requirements:

(a) Possession of a master's degree, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(b) Possession of a master's degree, or equivalent foreign degree, in a discipline reasonably related to the faculty member's assignment and possession of a bachelor's degree, or equivalent foreign degree, in the discipline of the faculty member's assignment.

(c) For faculty assigned to teach courses in disciplines where the master's degree is not generally expected or available, which are, generally, disciplines in specialized technical, trade, or industrial fields, either of the following:

(1) Possession of a bachelor's degree, or equivalent foreign degree, plus two years of professional experience directly related to the faculty member's assignment; or

(2) Possession of an associate degree, or equivalent foreign degree, plus six years of professional experience directly related to the faculty member's assignment.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87003, and 87356, Education Code.

HISTORY

1. New section filed 6-5-90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7-5-90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of first paragraph and subsections (a) and (b) filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Amendment filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).
4. Amendment of NOTE filed 11-10-93; operative 10-8-93 (Register 93, No. 46).
5. Editorial correction of subsection (c)(2) (Register 96, No. 40).

§ 53410.1. Professional License As Alternative Qualification.

For disciplines specified in this section, a bachelor's degree in the discipline of the assignment plus a professional license or certification may be substituted for the minimum qualifications specified in Section 53410. The license or certification so substituted must be valid in California. The following professional licenses and certifications are acceptable:

Discipline	*License or Certification*
Accounting	Certified Public Accountant
Counseling	Marriage, Family, and Child Counselor
Engineering	Professional Engineer
Nutritional Science/Dietetics	Registered Dietitian

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 10-5-93; operative 11-4-93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53411. Minimum Qualifications for Health Services Professionals.

(a) The minimum qualifications for a health services professional with overall responsibility for developing and directing student health services shall be a valid, current California license as a registered nurse, and either of the following:

(1) a master's degree in nursing and a California Public Health Nurse certificate; or

(2) a bachelor's degree in nursing, a California Public Health Nurse certificate, and a master's degree in health education, sociology, psychology, counseling, health care administration, public health, or community health.

(b) Other health services personnel shall not be subject to statewide minimum qualfications; however, all personnel shall possess appropriate valid, current licensure or certification to practice in California when required by law. Ancillary personnel shall work under appropriate supervision when required by their license laws.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87003 and 87356, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53412. Minimum Qualifications for Instructors of Noncredit Courses.

Except as provided elsewhere in this article, the minimum qualifications for service as a faculty member teaching a noncredit course shall be the same as the minimum qualifications for credit instruction in the appropriate discipline, or as follows:

(a) For an interdisciplinary noncredit basic skills course, a bachelor's in any social science, humanities, mathematics, or natural science discipline or in liberal studies, as appropriate for the course.

(b) For a noncredit basic skills course in mathematics, a bachelor's in mathematics.

(c) For a noncredit basic skills course in reading and/or writing, either: a bachelor's degree in English, literature, comparative literature, composition, linguistics, speech, creative writing, or journalism; or a bachelor's degree in any discipline and twelve semester units of coursework in teaching reading.

(d) For a noncredit course in citizenship, a bachelor's degree in any discipline, and six semester units in American history and institutions.

(e) For a noncredit course in English as a second language (ESL), any one of the following:

(1) A bachelor's degree in teaching English as a second language, or teaching English to speakers of other languages.

(2) A bachelor's degree in education, English, linguistics, applied linguistics, any foreign language, composition, bilingual/bicultural studies, reading, or speech; and a certificate in teaching English as a second language, which may be completed concurrently during the first year of employment as a noncredit instructor.

(3) A bachelor's degree with any of the majors specified in subparagraph (2) above; and one year of experience teaching ESL in an accredited institution; and a certificate in teaching English as a second language, which may be completed concurrently during the first two years of employment as a noncredit instructor.

(4) Possession of a full–time, clear California Designated Subjects Adult Education Teaching Credential authorizing instruction in ESL.

(f) For a noncredit course in health and safety, a bachelor's degree in health science, health education, biology, nursing, dietetics, or nutrition; or an associate degree in any of those subjects, and four years of professional experience related to the subject of the course taught.

(g) For a noncredit course in home economics, a bachelor's degree in home economics, life management, family and consumer studies, dietetics, food management, interior design, or clothing and textiles; or an associated degree in any of those subjects, and four years of professional experience related to the subject of the course taught.

(h) For a noncredit course intended for older adults, either pattern (1) or pattern (2) following:

(1) A bachelor's degree with a major related to the subject of the course taught; and either (A) or (B) below:

(A) Thirty hours or two semester units of course work or class work in understanding the needs of the older adult, taken at an accredited institution of higher education or approved by the district. This requirement may be completed concurrently during the first year of employment as a noncredit instructor.

(B) One year of professional experience working with older adults.

(2) An associate degree with a major related to the subject of the course taught; and two years of occupational experience related to the subject of the course taught; and sixty hours or four semester units of coursework or classwork in understanding the needs of the older adult, taken at an accredited institution of higher education or approved by the district. This last requirement may be completed concurrently during the first year of employment as a noncredit instructor.

(i) For a noncredit course in parent education, a bachelor's degree in child development, early childhood education, human development, family and consumer studies with a specialization in child development or early childhood education, educational psychology with a specialization in child development, elementary education, psychology, or family life studies; and two years of professional experience in early childhood programs or parenting education.

(j) For a short–term noncredit vocational course, any one of the following:

(1) A bachelor's degree; and two years of occupational experience related to the subject of the course taught.

(2) An associate degree; and six years of occupational experience related to the subject of the course taught.

(3) Possession of a full–time, clear California Designated Subjects Adult Education Teaching Credential authorizing instruction in the subject matter.

(4) For courses in an occupation for which the district offers or has offered apprenticeship instruction, the minimum qualifications for noncredit apprenticeship instructors in that occupation, as specified in Section 53413.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Amendment filed 6–19–91; operative 7–19–91. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 91, No. 50).
3. Amendment of first paragraph and subsection (b) filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
4. Repealer and new section filed 6–26–92; operative 7–27–92 (Register 92, No. 26).
5. Editorial correction of printing error in subsection (a) and inadvertant omission of subsection (h)(1) (Register 92, No. 45).
6. Amendment of section and NOTE filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1995, the minimum qualifications for service as a community college faculty member teaching credit or noncredit apprenticeship courses shall be satisfied by meeting both of the following requirements:

(1) Six years of occupational experience in an apprenticeable trade, including at least two years at the journeyman level; and

(2) Sixty clock hours or four semester units of instruction in materials, methods, and evaluation of instruction. This requirement may be satisfied concurrently during the first year of employment as an apprenticeship instructor.

(b) On or after July 1, 1995, the minimum qualifications for service as a community college faculty member teaching credit apprenticeship

courses shall be satisfied by meeting one of the following two requirements:

(1) Possession of an associate degree, plus four years of occupational experience in the subject matter area to be taught; or

(2) Six years of occupational experience, a journeyman's certificate in the subject matter area to be taught, and completion of at least eighteen (18) semester units of degree applicable college level course work, in addition to apprenticeship credits.

(c) On or after July 1, 1995, the minimum qualifications for service as a community college faculty member teaching noncredit apprenticeship courses shall be either of the following:

(1) The minimum qualifications for credit apprenticeship instruction as set forth in this section, or

(2) A high school diploma; and six years of occupational experience in the occupation to be taught, including at least two years at the journeyman level; and sixty clock hours or four semester units in materials, methods, and evaluation of instruction. This last requirement may be satisfied concurrently during the first year of employment as an apprenticeship instructor.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

HISTORY

1. New section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Amendment of subsections (a), (b) and (b)(3) filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. New subsections (c)–(c)(2) filed 6–26–92; operative 7–27–92 (Register 92, No. 26).
4. Amendment of section and NOTE filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53414. Minimum Qualifications for Disabled Students Programs and Services Employees.

(a) The minimum qualifications for service as a community college counselor of students with disabilities shall be satisfied by meeting one of the following requirements;

(1) Possession of a master's degree, or equivalent foreign degree, in rehabilitation counseling, or

(2) Possession of a master's degree, or equivalent foreign degree, in special education, and twenty four or more semester units in upper division or graduate level course work in counseling, guidance, student personnel, psychology, or social work; or

(3) A master's degree in counseling, guidance, student personnel, psychology, career development, or social welfare; and either twelve or more semester units in upper division or graduate level course work specifically in counseling or rehabilitation of individuals with disabilities, or two years of full-time experience, or the equivalent, in one or more of the following;

(A) Counseling or guidance for students with disabilities; or

(B) Counseling and/or guidance in industry, government, public agencies, military or private social welfare organizations in which the responsibilities of the position were predominantly or exclusively for persons with disabilities.

(b) The minimum requirements for service as a community college faculty member teaching a credit course in adapted physical education shall be the minimum qualifications for an instructor of credit physical education, and fifteen semester units of upper division or graduate study in adapted physical education.

(c) The minimum requirements for service to work with students with speech and language disabilities shall be satisfied by meeting the following requirements:

(1) Possession of a master's degree, or equivalent foreign degree, in speech pathology and audiology, or in communication disorders; and

(2) Licensure or eligibility for licensure as a speech pathologist or audiologist by the Medical Board of California.

(d) Except as provided in Subsections (a) through (c) above, the minimum requirements for service as a community college faculty member to provide credit specialized instruction for students with disabilities shall be satisfied by meeting the following requirements:

(1) Possession of a master's degree, or equivalent foreign degree, in the category of disability, special education, education, psychology, educational psychology, or rehabilitation counseling; and

(2) Fifteen semester units of upper division or graduate study in the area of disability, to include, but not be limited to:

(A) Learning disabilities;

(B) Developmental disabilities;

(C) Deaf and hearing impaired;

(D) Physical disabilities; or

(E) Adapted computer technology.

(e) The minimum qualifications for service as a faculty member to provide noncredit specialized instruction for students with disabilities shall be any one of the following:

(1) The minimum qualifications for providing credit specialized instruction for students with disabilities as specified in this section.

(2) A bachelor's degree with any of the following majors: education of students with specific or multiple disabilities; special education; psychology; physical education with an emphasis in adaptive physical education; communicative disorders; rehabilitation; computer–based education; other computer–related majors which include course work on adapted or assistive computer technology for students with disabilities; other majors related to providing specialized instruction or services to persons with disabilities.

(3) An associate degree with one of the majors specified in subparagraph (2) above; and four years of experience providing specialized instruction or services to persons in the disability category or categories being served.

(4) For noncredit vocational courses, an associate degree or certificate of training; and four years of occupational experience related to the subject of the course taught; and two years of experience providing specialized instruction or services to persons in the disability category being served.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

HISTORY

1. New section filed 10–30–90 with Secretary of State by Board of Governors, California Community Colleges; operative 11–30–90 (Register 90, No. 49). Submitted to OAL for printing only pursuant to Education Code section 70901.5(b).
2. Amendment filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Amendment of subsections (a)(3), (b), (c)(2) and (d), and new subsections (e)–(e)(4) filed 6–26–92; operative 7–27–92 (Register 92, No. 26).
4. Amendment of section and NOTE filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53415. Minimum Qualifications for Learning Assistance or Learning Skills Coordinators or Instructors, and Tutoring Coordinators.

The minimum qualifications for service as a learning assistance or learning skills coordinator or instructor, or tutoring coordinator, shall be either (a) or (b) below:

(a) the minimum qualifications to teach any master's level discipline in which learning assistance or tutoring is provided at the college where the coordinator is employed; or

(b) a master's degree in education, educational psychology, or instructional psychology, or other master's degree with emphasis in adult learning theory.

Minimum qualifications do not apply to tutoring or learning assistance for which no apportionment is claimed.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901 and 87356, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53416. Minimum Qualifications for Work Experience Instructors or Coordinators.

The minimum qualifications for an instructor or coordinator of general or occupational work experience education, as defined in Section 55252, shall be the minimum qualifications in any discipline in which work experience may be provided at the college where the instructor or coordinator is employed.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901 and 87356, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53417. Licensed or Certificated Occupations.

In addition to other minimum qualifications specified in this article, the minimum qualifications for a faculty member teaching any credit or noncredit course shall include a current, valid certificate to work or a license to practice in California, whenever the instructor's possession of such a certificate or license is required for program or course approval, or when current occupational certification is essential for effective instruction, as determined through local hiring procedures.

NOTE: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901 and 87356, Education Code.

HISTORY

1. New section filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53420. Minimum Qualifications for Educational Administrators.

The minimum qualifications for service as an educational administrator shall be both of the following:

(a) Possession of a master's degree; and

(b) One year of formal training, internship, or leadership experience reasonably related to the administrator's administrative assignment.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Sections 87002 and 87356, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of section heading and first paragraph filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Amendment of section and NOTE filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).

§ 53430. Equivalencies.

(a) No one may be hired to serve as a community college faculty or educational administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in this Article or elsewhere in this Division. The criteria used by the governing board in making the determination shall be reflected in the governing board's action employing the individual.

(b) The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty employed under the authority granted by this Section possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in this Division.

(c) The process shall further require that the academic senate be provided with an opportunity to present its views to the governing board before the governing board makes a determination; and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Education Code Section 87358.

(d) Until a joint agreement is reached and approved pursuant to Subdivision (b), the district shall be bound by the minimum qualifications set forth in this Subchapter.

NOTE: Authority cited: Sections 66700, 70901 and 87359, Education Code. Reference: Section 87359, Education Code.

HISTORY

1. New section filed 6–5–90 by the Board of Governors, California Community Colleges, with the Secretary of State; operative 7–5–90. Submitted to OAL for printing only pursuant to Education Code section 70901.5(b) (Register 90, No. 37).
2. Amendment of subsections (a) and (b) filed 10–25–91; operative 11–24–91 (Register 92, No. 9).
3. Amendment filed 10–5–93; operative 11–4–93. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 93, No. 42).
4. Amendment of subsections (a), (b) and (d) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

Subchapter 5. Faculty Internship Programs

§ 53500. General Authority.

The governing board of any community college district may establish a faculty internship program pursuant to the provisions of this Subchapter and Section 87487 of the Education Code. In accordance therewith, governing boards may employ, as faculty interns within the program, graduate students enrolled in the California State University, the University of California, or any other accredited institution of higher education subject to Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code or in vocational and technical fields where a master's degree is not generally expected or available, persons who are within one year of meeting the regular faculty minimum qualifications. Persons who meet the regular faculty minimum qualifications but who lack teaching experience may also be included in internship programs authorized by this Section to the extent authorized by the local governing board. A student employed as a faculty intern shall be employed as a temporary faculty member under Section 87482.5 of the Education Code, and shall meet the minimum qualifications specified in Section 53502.

For purposes of this Subchapter, the term "faculty intern" does not include any person, no matter how designated, who only assists in a class taught by a regularly qualified faculty member, and who has no independent responsibility for instruction or supervision of students. Such a person may be termed an "intern," and may serve as a volunteer or receive a stipend according to policies established by the district.

NOTE: Authority cited: Sections 70901 and 87487, Education Code. Reference: Section 87487, Education Code.

HISTORY

1. New section filed 4–3–92; operative 5–4–92 (Register 92, No. 15).
2. Amendment filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
3. Amendment of first paragraph filed 9–3–96; operative 10–3–96. Submitted to OAL for printing only (Register 96, No. 40).

§ 53501. Purposes.

The purposes of the faculty internship shall include, but not be limited to, the following:

(a) To enhance the recruitment of qualified persons pursuing the master's or doctoral degrees, or both, into faculty positions in community colleges in California, particularly for disciplines for which recruitment is difficult and for disciplines in which a shortage of qualified faculty is anticipated. In order to accomplish this purpose, the internship program shall serve to introduce graduate students, before they approach the end of their graduate studies, to the community college environment and student population.

(b) To enhance the recruitment of qualified persons pursuing an associate degree into faculty positions in community colleges in California, particularly for disciplines for which current industry experience is important and disciplines for which recruitment is difficult and in which a shortage of faculty is anticipated. In order to accomplish this purposes, the internship program shall serve to introduce industry practitioners to the community college environment and student populations while encouraging them to complete their associate degree.