

ITEM 3
TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 70901, subdivision (b)(1)(B), 87356, 87357, 87358, 87359, 87360,
87610.1, 87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, 87743.5

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

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

Register 90, No. 37 (July 5, 1990), Register 90, No. 49 (Nov. 30, 1990), Register 91, No. 23
(June 7, 1991), Register 91, No. 50 (July 19, 1991), Register 92, No. 9 (Nov. 24, 1991), Register
92, No. 26 (July 27, 1992), Register 92, No. 45 (Nov. 6, 1992), Register 93, No. 25 (June 4,
1993), Register 93, No. 42 (Nov. 4, 1993), Register 93, No. 46 (Oct. 8, 1993), Register 94, No.
38 (Oct. 6, 1994), Register 95, No. 19 (Mar. 19, 1995), Register 96, No. 40 (Oct. 4, 1996)

Employment of Community College Faculty and Administrators
02-TC-27

Santa Monica Community College District, Claimant

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Cases cited

- Anderson v. San Mateo Community College Dist.* (1978) 87 Cal.App.3d 441
- McGuire v. Governing Board* (1984) 161 Cal.App.3d 871, 874.
- Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633-634.
- Steward v. San Mateo Junior Collect Dist. et al.* (1974) 37 Cal.App.3d 345. .

Other material cited

- Academic Senate for California Community Colleges, FAQs on Minimum Qualifications
- Academic Senate for California Community Colleges, List of Disciplines,
<http://www.asccc.org/disciplines-list>
- Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.
- Board of Governors, California Community Colleges, Board Certification Regarding Adequate Funding for Phase II of AB 1725. (Agenda Item 14) November 8-9, 1990.
- Commission for the Review of the Master Plan for Higher Education. *The Challenge of Change: A Reassessment of the California Community Colleges*, 1986 (selected pages)
- Former California Code of Regulations, title 5, section 52600, Register 70, No. 20 (May 16, 1970), page 622.35.
- Former California Code of Regulations, title 5, section 52030 et seq., Register 83, No. 29 (July 16, 1983) page 628.15.
- Former California Code of Regulations, title 5, sections 52275 and 52277, Register 83, No. 29 (July 16, 1983) page 628.48.1.
- Former Education Code section 200.11 (Stats. 1970, ch. 102)
- Former Education Code section 939 (Stats. 1971, ch. 956)
- Former Education Code sections 13343, 13346.25, 13346.32
- Former Education Code section 13345.10 (Stats. 1971, ch. 1654)
- Former Education Code section 13443 (Stats. 1965, ch. 1110, Stats. 1973, ch. 1016)
- Former Education Code section 13481.05 (Stats. 1971, ch. 1653)
- Former Education Code section 13566 (Stats. 1959 ch. 458)
- Former Education Code section 72413 (Stats. 1976, ch. 1010)
- Former Education Code section 87714 (Stats. 1976, ch. 1010)
- Former Education Code section 87295 (Stats. 1976, ch. 1010)
- Statutes 1984, chapter 1506

SixTen and Associates

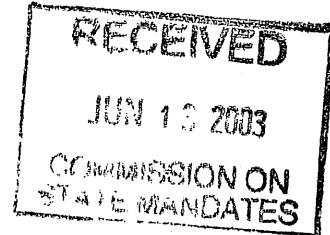
Mandate Reimbursement Services

Exhibit A

WIRTH B. PETERSEN, MPA, JD, President
252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

June 10, 2003



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.

Paula Higashi, Executive Director,
Commission on State Mandates

June 10, 2003

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

Sincerely,

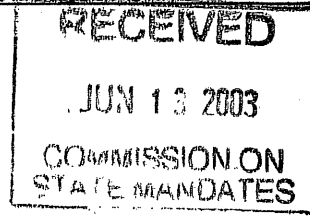


Keith B. Petersen

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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TEST CLAIM FORM

Claim No. 02-TC-27

Local Agency or School District Submitting Claim

SANTA MONICA COMMUNITY COLLEGE DISTRICT

Contact Person

Telephone Number

Keith B. Petersen, President
SixTen and Associates

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
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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

Telephone No.

Tom Donner
Executive Vice President - Business and Administration

(310) 434-4221

Signature of Authorized Representative

Date

X

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 Administrators

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

Claim Prepared By:
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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

)	No. CSM. _____
)	
Test Claim of)	Chapter 124, Statutes of 2000
	)	Chapter 1023, Statutes of 1998
Santa Monica	)	Chapter 758, Statutes of 1995
Community College District,	)	Chapter 506, Statutes of 1993
	)	Chapter 1302, Statutes of 1990
	)	Chapter 973, Statutes of 1988
	)	Chapter 470, Statutes of 1981
)	
Test Claimant.	)	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
)	
	)	<u>Employment of College Faculty and Administrators</u>

TEST CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government

Test Claim of Santa Monica Community College District
Chapter 124/2000 Employment of College Faculty and Administrators

1 Code section 17551 (a) to ". . . hear and decide upon a claim by a local agency or
2 school district that the local agency or school district is entitled to be reimbursed by the
3 state for costs mandated by the state as required by Section 6 of Article XIII B of the
4 California Constitution." Santa Monica Community College District is a "school district"
5 as defined in Government Code section 17519.¹

6 PART II. LEGISLATIVE HISTORY OF THE CLAIM

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

15 SECTION 1. LEGISLATIVE HISTORY PRIOR TO DECEMBER 31, 1974

16 Education Code Section 13345² provided that the Article governed the

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

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Chapter 124/2000 Employment of College Faculty and Administrators

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 13345.05³ provided definitions to be used in the Article.

8 Education Code Section 13345.10⁴ provided the definitions of a contract

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:

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

2 Education Code Section 13345.15⁵ excluded from the provisions of the Article
3 persons employed as superintendents, assistant superintendents, deputy
4 superintendents or presidents of the community college.

5 Education Code Section 13346⁶ required the governing board to employ each
6 certificated person as either a contract employee, a regular employee or a temporary
7 employee.

8 Education Code Section 13346.05⁷ required the governing board of a district to

"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

Test Claim of Santa Monica Community College District
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1 employ individuals in positions requiring certification qualifications for the first academic
2 year of his employment by contract.

3 Education Code Section 13346.10⁸ 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 13346.15⁹, 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

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."

Test Claim of Santa Monica Community College District
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1 board to consider the employee's most recent evaluations. Subdivision (c) required the
2 governing board to have received the president's recommendations if the individual was
3 employed at a community college.

4 Education Code Section 13346.20¹⁰ required the board, if a contract employee
5 was working under his first contract, to either (a) not enter into a contract with the
6 employee for a second academic year, (b) enter into a contract for the second academic
7 year, or (c) employ the employee as a regular employee for all subsequent academic
8 years.

9 Education Code Section 13346.25¹¹ required the board, if a contract employee
10 was employed under his second consecutive contract, to either (a) employ the employee

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."

Test Claim of Santa Monica Community College District
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1 as a regular employee for all subsequent academic years or (b) not employ the
2 employee as a regular employee.

3 Education Code Section 13346.30¹² required the governing board to give written
4 notice of its employment decisions on or before March 15 of the academic year covered
5 by the existing contract. Failure to provide notice to an employee working under his first
6 contract was deemed an extension of the existing contract without change for the
7 following academic year. Failure to give notice to a employee working under his second
8 consecutive contract was deemed a decision to employ him as a regular employee for all
9 subsequent academic years.

10 Education Code Section 13346.32¹³ provided that a contract employee, who

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.”

¹³Education 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.”

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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 13447¹⁴ provided that, when in the opinion of the

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."

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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 13481¹⁵ required that contract employees be evaluated
10 at least once in each academic year and required that regular employees be evaluated
at least once every two academic years.

12 Education Code Section 25490¹⁶ provided that the provisions of the article shall
13 apply to all persons employed by a community college district in positions requiring

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.”

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1 certification qualification.

2 Education Code Section 25490.10¹⁷ 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 imposition of penalties for persons employed by a community college district in positions
6 requiring certification qualifications.

7 Education Code Section 25490.30¹⁸ provided that the rules and regulations

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

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

7 **SECTION 2: LEGISLATIVE HISTORY AFTER JANUARY 1, 1975**

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

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

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.”

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1	13346.15	87607
2	13346.20	87608
3	13346.25	87608.5
4	13346.25	87609
5	13346.30	87610
6	13346.32	87611
7	25490	87620
8	25490.10	87622
9	25490.30	87626
10	13481	87663
11	13447	87743

12 Chapter 470, Statutes of 1981, Section 382.5, added Education Code Section
13 87714¹⁹ which required the chief executive officer of each community college district to,
14 at times required by the county superintendent of schools, and at least annually, provide
15 an affidavit that all employees in positions requiring certifications were properly
16 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.”

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1

Chapter 973, Statutes of 1988, Section 8, added Section 70901²⁰ which requires

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

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.

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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,
commencing with Education Code Section 87355, and provides minimum qualification

(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."

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1 and hiring criteria.

2 Section 87356²¹, subdivision (a), requires the board of governors to adopt

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.

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

- 5 (1) Possession of a master's degree from an accredited institution, or
6 equivalent foreign degree, in the discipline of the faculty member's
7 assignment.
- 8 (2) Possession of a master's degree from an accredited institution, or
9 equivalent foreign degree, in a discipline reasonably related to the faculty
10 member's assignment and possession of a bachelor's degree from an
11 accredited institution, or equivalent foreign degree, in the discipline of the
12 faculty member's assignment.
- 13 (3) For faculty assigned to teach courses in disciplines where the master's
14 degree is not generally expected or available, which are, generally,
15 disciplines in specialized technical, trade or industrial fields, possession of
16 a bachelor's or associate degree plus designated years of practical
17 experience in the field.

(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."

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1 Section 87357²² requires the board of governors, when establishing and
2 maintaining minimum qualifications to:

²²Education 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.”

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- 1 (1) To consult with and rely on the advice and judgment of the statewide
2 Academic Senate when determining the minimum qualifications for
3 faculty; and consult with an appropriate statewide organization of
4 administrators when discussing the minimum qualifications for instructional
5 or student service administrators, and
- 6 (2) To establish a process to review the continued appropriateness and
7 adequacy of the minimum qualifications and the means by which they are
8 administered at least every three years.

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

12 Section 87358²³ requires the board of governors to periodically designate a group
13 of community college faculty, administrators and trustees to review each community
14 college district's applications of minimum qualifications to faculty and administrators.

15 Section 87359²⁴ requires the board of governors to adopt regulations setting forth

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

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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

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."

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1 unless the governing board determines that he or she possesses
2 qualifications that are at least the equivalent to the minimum qualifications
3 specified in the regulations of the board adopted pursuant to Section
4 87356.

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

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

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1 Article 3, commencing with Education Code Section 87360 provides additional
2 hiring criteria. Section 87360²⁵ requires:

- 3 (a) That, by July 1, 1990, the district governing boards shall develop hiring
4 criteria for faculty and administrators that include an understanding of
5 diverse academic, socioeconomic, cultural, disability and ethnic
6 backgrounds of community college students.
- 7 (b) That, by July 1, 1990, the hiring criteria, policies and procedures for new
8 faculty members must be developed and agreed upon jointly by
9 representatives of the governing board and the academic senate and
10 approved by the governing board.
- 11 (c) That, until a joint agreement is approved, the existing district process in
12 existence on January 1, 1989 must remain in effect.

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

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."

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

2 87610.1²⁶ to require, in subdivision (a), that, in those districts where tenure evaluation

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

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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,

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

2 Note: Education Code Section 87740²⁷, subdivision (c) (as last amended in

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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1

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

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

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

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

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

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.”

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

4 Chapter 973, Statutes of 1988, Section 47, repealed Education Code Section
5 87611. Section 48 added a new Education Code Section 87611²⁸ to require, for the first
6 time, that any final decision reached after a grievance or hearing shall be subject to
7 judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

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

10 Chapter 973, Statutes of 1988, Section 51, amended Education Code Section
11 87663²⁹ to add subdivisions (c) through (i). Subdivision (c), requires that evaluations, for

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

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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.

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."

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

10 Chapter 973, Statutes of 1988, Section 52, added Education Code Section
11 87743.1³⁰ to define "faculty service area" as a service or instructional subject area or
12 group of related services or instructional subject areas performed by faculty and
13 established by a community college district.

14 Chapter 973, Statutes of 1988, Section 53, added Education Code Section
15 87743.2³¹ to require that, no later than July 1, 1990, each community college district

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

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

4 Chapter 973, Statutes of 1988, Section 54, added Education Code Section
5 87743.3³² to provide that each faculty member shall qualify for one or more faculty
6 service areas at the time of initial employment for which the faculty member has met
7 both minimum qualifications pursuant to Section 87356 and district competency
8 standards. After initial employment, a faculty member may apply to the district to add
9 faculty service areas for which the faculty member qualifies. Any dispute arising from an

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.”

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

3 Chapter 973, Statutes of 1988, Section 55, added Education Code Section
4 87743.4³³ to require that the district maintain a permanent record for each faculty
5 member employed by the district of each faculty service area for which the faculty
6 member possesses the minimum qualifications for service and in which he or she has
7 established competency pursuant to district competency standards.

8 Chapter 973, Statutes of 1988, Section 56, added Education Code Section
9 87743.5³⁴ which requires that each community college district, no later than July 1, 1990,
10 to establish competency criteria for faculty members employed by the district after
11 meeting and negotiating with the faculty's exclusive representative.

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

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."

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

5 Chapter 1302, Statutes of 1990, Section 122, amended Education Code Section
6 87714³⁶ to substitute the board of governors for the county superintendent of schools to
7 whom the annual affidavits shall be sent.

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. wWith 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.”

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1 Chapter 8, Statutes of 1993, Section 35.5 repealed Education Code Section
2 87356, effective April 15, 1993, Chapter 506, Statutes of 1993, Section 2, added a new
3 Education Code Section 87356³⁷ which was similar to the section repealed, but added
4 faculty members teaching noncredit instruction, librarians, counselors, educational
5 administrators, extended opportunity programs and services workers, disabled students
6 programs and services workers, apprenticeship instructors and supervisors of health the
7 new section also did not repeat the specific requirements set forth in the repealed
8 section.

9 Chapter 506, Statutes of 1993, Section 3, amended Education Code Section
10 87359³⁸ to require the board of governors to adopt regulations setting forth a process

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

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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.

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."

1 SECTION 3. CALIFORNIA CODE OF REGULATIONS³⁹

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

10 Subchapter 4, commencing with Section 53400, provides regulations for
11 "Minimum Qualifications". Section 53400 (added in 1990 and last amended in 1994)
12 provides that Sections 53400 through 53430, implements and should be read in
13 conjunction with the requirements of Education Code Sections 87001, 87002, 87003,
14 87356 and 87359 concerning minimum qualifications for community college faculty and
15 administrators.

16 Section 53401 (added in 1992 and last amended in 1994) provides that
17 community service or contract classes, which do not award college credit and are not
18 supported by state apportionment, are not subject to this subchapter. Contract classes
19 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.

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1 by state apportionment.

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

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

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

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

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

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

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

- 3 (1) To establish a working definition of the term "discipline" as used in Section
4 53410;
- 5 (2) To define which disciplines are "reasonably related" to one another, for
6 purposes of Section 53410; and
- 7 (3) To define disciplines in which the master's degree is not generally expected or
8 available, as opposed to those for which the master's degree is required, for
9 purposes of Section 53410.

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

- 14 (a) Possession of a master's degree, or equivalent foreign degree, in the
15 discipline of the faculty member's assignment.
- 16 (b) Possession of a master's degree, or equivalent foreign degree, in a
17 discipline reasonably related to the faculty member's assignment and
18 possession of a bachelor's degree, or equivalent foreign degree, in the
19 discipline of the faculty member's assignment.
- 20 (c) For faculty assigned to teach courses in disciplines where the master's
21 degree is not generally expected or available, which are, generally,

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

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

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

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

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

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

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

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

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

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

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

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

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

PART III. STATEMENT OF THE CLAIM

SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

7 The statutes and California Codes of Regulations referenced in this test claim
8 result in community college districts incurring costs mandated by the state, as defined in
9 Government Code Section 17514⁴⁰, by creating new state-mandated duties related to
10 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
12 and entities in the state.⁴¹

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.”

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

6 **Education Code Provisions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 K) Pursuant to Education Code Section 87740, subdivision (c), in the event there is
11 no contractual grievance procedure resulting in arbitration pursuant to Education
12 Code Sections 87610.1, subdivision (b), conducting the hearing and making a
13 decision in accordance with Chapter 5 (commencing with Section 11500) of Part
14 1 of Division 3 of Title 2 of the Government Code and the governing board shall
15 have all the power granted to an agency in that chapter, except that all of the
16 following shall apply:

- 17 (1) The respondent shall file his or her notice of defense, if any, within
18 five days after service upon him or her of the accusation and he or
19 she shall be notified of this five-day period for filing the accusation.
- 20 (2) The discovery authorized by Section 11507.6 of the Government
21 Code shall be available only if request is made therefor within 15

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1 days after service of the accusation, and the notice required by

2 Section 11505 of the Government Code shall so indicate.

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

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

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

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

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

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

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

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

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1 elect an exclusive representative.

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

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

9 P) Pursuant to Education Code Section 87743.2, establishing and updating faculty
10 service areas, within the scope of meeting and negotiating pursuant to Section
11 3543.2 of the Government Code. The exclusive representative shall consult with
12 the academic senate in developing its proposals.

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

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

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

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

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

8 **Title 5, California Code of Regulations Provisions**

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

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

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

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

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

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

7 (3) Verification of the minimum qualifications for service as a community
8 college faculty member teaching any credit course, or as a counselor or
9 librarian as required by Title 5, California Code of Regulations, Section
10 53410.

11
12 (4) Verification of possession of a bachelor's degree in the discipline of the
13 proposed assignment plus a professional license or certification as
14 required by Title 5, California Code of Regulations, Section 53410.1.

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

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

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

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

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

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

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

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

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

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

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

13 **SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT**

14 None of the Government Code Section 17556⁴² statutory exceptions to a finding

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

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

6 SECTION 3. FUNDING FOR THE STATE MANDATE

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

8 Several of the duties included in this test claim were initially established by "AB
9 1725," Statutes of 1988, Chapter 973. At Section 70 (an uncodified section),

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.

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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 84755⁴⁴ (added by Statutes of 1988,

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

Test Claim of Santa Monica Community College District
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1

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).

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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

(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.

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

9 To the extent that funding was made available, and continues to be made
10 available each subsequent year, such funding might reduce the reimbursable costs, but
does not preclude an initial determination of whether a reimbursable mandate exists.

12 The test claimant is informed and believes that the Chancellor of the California
13 Community Colleges on or about 1991 prepared a AB 1725 cost questionnaire to obtain
14 from each community college the cost of implementing the provisions of AB 1725, that
15 the cost data was specific to each new program enacted, that most of the community
16 colleges provided this data to the Chancellor, and that the Chancellor is in possession of
17 this information. This information can be utilized to establish base-period cost and
18 revenue information.

19 Special Purpose Funding

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

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

9 PART IV. ADDITIONAL CLAIM REQUIREMENTS

10 The following elements of this claim are provided pursuant to Section 1183, Title
11 2, California Code of Regulations:

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

15
16 Exhibit 2: Copies of Statutes cited:
17 Chapter 124, Statutes of 2000
18 Chapter 1023, Statutes of 1998
19 Chapter 758, Statutes of 1995
20 Chapter 506, Statutes of 1993
21 Chapter 1302, Statutes of 1990
22 Chapter 973, Statutes of 1988
23 Chapter 470, Statutes of 1981

24
25 Exhibit 3: Education Code sections cited
26 Education Code Section 70901
27 Education Code Section 87357
28 Education Code Section 87358
29 Education Code Section 87359
30 Education Code Section 87360
31 Education Code Section 87610.1

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1	Education Code Section 87611
2	Education Code Section 87663
3	Education Code Section 87714
4	Education Code Section 87740
5	Education Code Section 87743.2
6	Education Code Section 87743.3
7	Education Code Section 87743.4
8	Education Code Section 87743.5
9	<u>Exhibit 4:</u> Title 5, California Code of Regulations sections cited
10	Section 53130
11	Section 53207
12	Section 53403
13	Section 53406
14	Section 53407
15	Section 53410
16	Section 53410.1
17	Section 53412
18	Section 53414
19	Section 53415
20	Section 53416
	Section 53417
22	Section 53420
23	Section 53430
24	/
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Test Claim of Santa Monica Community College District
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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) 434-1000

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.



6-4-03

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

Date

**EXHIBIT 1
DECLARATION**

1 **DECLARATION OF TOM DONNER**

2
3 **Santa Monica Community College District**

4
5
6 Test Claim of Santa Monica Community College District

7
8 COSM No. _____

- 9
10 Chapter 124, Statutes of 2000
11 Chapter 1023, Statutes of 1998
12 Chapter 758, Statutes of 1995
13 Chapter 506, Statutes of 1993
14 Chapter 1302, Statutes of 1990
15 Chapter 973, Statutes of 1988

- 16
17 Education Code Section 70901
18 Education Code Section 87356
19 Education Code Section 87357
20 Education Code Section 87358
21 Education Code Section 87359
22 Education Code Section 87360
23 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

- 24
25
26 Title 5, California Code of Regulations
27 Section 53130 Section 53412
28 Section 53403 Section 53414
29 Section 53406 Section 53415
30 Section 53407 Section 53416
31 Section 53410 Section 53417
32 Section 53410.1 Section 53420
33 Section 53430

34
35 **Employment of College Faculty and Administrators**

36
37 I, Tom Donner, Executive Vice President - Business and Administration, Santa
38 Monica Community College District, make the following declaration and statement.

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

Declaration of Tom Donner
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1 Statutes, Education Code Sections and Title 5 Regulations enumerated above.

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

4 **Education Code Provisions**

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

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

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

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

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

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

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

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

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

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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.

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

8 K) Pursuant to Education Code Section 87740, subdivision (c), in the event there is
9 no contractual grievance procedure resulting in arbitration pursuant to Education
10 Code Sections 87610.1, subdivision (b), conducting the hearing and making a
11 decision in accordance with Chapter 5 (commencing with Section 11500) of Part
12 1 of Division 3 of Title 2 of the Government Code and the governing board shall
13 have all the power granted to an agency in that chapter, except that all of the
14 following shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 P) Pursuant to Education Code Section 87743.2, establishing and updating faculty
8 service areas, within the scope of meeting and negotiating pursuant to Section
9 3543.2 of the Government Code. The exclusive representative shall consult with
10 the academic senate in developing its proposals.

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

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

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

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

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

6 **Title 5, California Code of Regulations Provisions**

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

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

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

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

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- 1 (2) Verification of disciplines requiring a Master's Degree and those disciplines
2 in which a Master's Degree is not generally expected or available by
3 reference to publications and lists maintained by the Chancellor's office as
4 required by Title 5, California Code of Regulations, Section 53407.
- 5 (3) Verification of the minimum qualifications for service as a community
6 college faculty member teaching any credit course, or as a counselor or
7 librarian as required by Title 5, California Code of Regulations, Section
8 53410.
- 9 (4) Verification of possession of a bachelor's degree in the discipline of the
10 proposed assignment plus a professional license or certification as
11 required by Title 5, California Code of Regulations, Section 53410.1.
- 12 (5) Verification of possession of the minimum qualifications for a faculty
13 member teaching a noncredit course as required by Title 5, California
14 Code of Regulations, Section 53412.
- 15 (6) Verification of possession of the minimum qualifications for a faculty
16 member teaching disabled programs and services as required by Title 5,
17 California Code of Regulations, Section 53414.
- 18 (7) Verification of possession of the minimum qualifications for a faculty
19 member teaching as a learning assistance or learning skills coordinator or
20 instructor, or tutoring coordinator as required by Title 5, California Code of
21 Regulations, Section 53415.

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

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

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

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

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

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

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

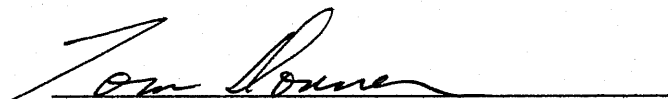
16 The foregoing facts are known to me personally and, if so required, I could testify
17 to the statements made herein. I hereby declare under penalty of perjury that the

18 /
19 /
20 /
21 /

Declaration of Tom Donner
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1 foregoing is true and correct except where stated upon information and belief and where
2 so stated I declare that I believe them to be true.

3 EXECUTED this 27th day of June, 2003, at Santa Monica, California.

4
5 

6 Tom Donner
7 Executive Vice President - Business and Administration
8 Santa Monica Community College District
9
10
11

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

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Additions or changes indicated by underline; deletions by asterisks * * *

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

Additions or changes indicated by underline; deletions by ~~asterisks~~ * * *

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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:

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Additions or changes indicated by underline; deletions by asterisks * * *

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.

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(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

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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 hygienist 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 for 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

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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 community 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

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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.

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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,

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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.

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(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

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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

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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

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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

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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

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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

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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.

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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

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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 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

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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

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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

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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

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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

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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.

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STATUTES OF 1981

[Ch. 471

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.

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(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.

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(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;

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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 senate 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.

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 nonsupervisory, 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:

<i>Discipline</i>	<i>License or Certification</i>
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 qualifications; 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 inadvertent 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.

SixTen and Associates Mandate Reimbursement Services

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November 20, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

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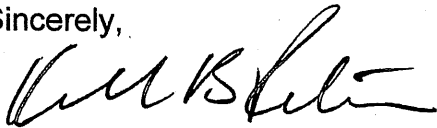
**COMMISSION ON
STATE MANDATES**

Re: No. CSM. 02-TC -27
Employment of College Faculty & Administrators

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

1 Keith B. Petersen
2 SixTen and Associates
3 3841 North Freeway Blvd, Suite 170
4 Sacramento, CA 95834
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8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11	Supplement to the:)	No. CSM. 02-TC -27
12)	
13	Test Claim Filed June 13, 2003	)	<u>Employment of College Faculty &</u>
14		)	<u>Administrators</u>
15)	
16		)	History Index for
17		)	Title 5, California Code of Regulations
18	by Santa Monica Community College)	
19	District	)	Section 53130
20		)	Section 53403
21		)	Section 53406
22		)	Section 53407
23		)	Section 53410
24		)	Section 53410.1
25		)	Section 53412
26		)	Section 53414
27		)	Section 53415
28		)	Section 53416
29		)	Section 53417
30		)	Section 53420
31		)	Section 53430
32)	
33)	

34 REQUEST FOR SUPPLEMENTAL INFORMATION

35 This supplement to the test claim provides an index and copy of each change to
36 the Title 5, CCR, sections included in the test claim. The Registers cited are attached
37 as Exhibit A. Amended language is underlined (new language) or stricken out (deleted)

1 language).

2 HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

3 **Register 90-37** § 53400: New section added.

4 § 53402: New section added.

5 § 53410: New section added.

6 § 53420: New section added.

7 § 53430: New section added.

8 **Register 90-49** § 53412: New section added.

9 § 53413: New section added.

10 § 53414: New section added.

Register 91-23 § 53130: New section added.

12 **Register 91-50** § 53412: Amendment of section.

13 **Register 92-09** § 53400: Amendment of section.

14 § 53402: Amendment of section.

15 § 53410: Amendment of first paragraph and subsections (a) and
16 (b).

17 § 53412: Amendment of first paragraph and subsection (b).

18 § 53413: Amendment of subsections (a), (b), and (c).

19 § 53414: Amendment to section.

20 § 53420: Amendment of section heading and first paragraph.

21 § 53430: Amendment of subsections (a) and (b).

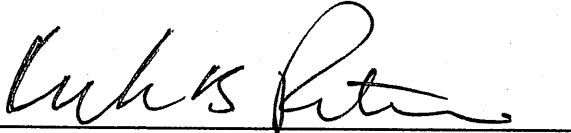
- 1 **Register 92-26** § 53401: New section added.
- 2 § 53403: New section added.
- 3 § 53404: New section added.
- 4 § 53412: Repealed, new section added.
- 5 § 53414: Amendment of subsections (a)(3), (b), (c)(2) and (d),
6 and new subsections (e)-(e)(4).
- 7 § 53420: Amendment to section.
- 8 § 53430: Amendment to section.
- 9 **Register 92-45** § 53412: Editorial correction of printing error in subsection (a)
10 and inadvertent omission of subsection (h)(1).
- 11 **Register 93-25** § 53130: New article 1.6 heading.
- 12 § 53400: Amendment to section.
- 13 § 53401: Amendment to section.
- 14 § 53405: New section added.
- 15 **Register 93-42** § 53403: New second paragraph and amendment of NOTE.
- 16 § 53404: Amendment of NOTE.
- 17 § 53406: New section added.
- 18 § 53407: New section added.
- 19 § 53410: Amendment to section.
- 20 § 53410.1: New section added.
- 21 § 53411: New section added.
- 22 § 53412: Amendment of section and NOTE.

- 1 § 53413: Amendment of section and NOTE.
- 2 § 53414: Amendment of section and NOTE.
- 3 § 53415: New section added.
- 4 § 53416: New section added.
- 5 § 53417: New section added.
- 6 § 53420: Amendment of section and NOTE.
- 7 § 53430: Amendment of section.
- 8 **Register 93-46** § 53410: Amendment to NOTE section.
- 9 **Register 94-38** § 53400: Amendment to section.
- 10 § 53401: Amendment to section
- § 53404: Amendment to section
- 12 § 53406: Amendment to section
- 13 § 53430: Amendment to section
- 14 **Register 95-19** § 53130: Editorial Correction of HISTORY 1.
- 15 **Register 96-40** § 53410: Editorial correction of subsection (c)(2).
- 16 **Subsequent Registers:** There may be changes to the regulations after the date the
- 17 test claim was filed, which are not included.
- 18 /
- 19 /
- 20 /
- 21 /
- /

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 20 day of November 2007, at Sacramento, California



FOR THE TEST CLAIMANT

Keith Petersen, President

SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

Register 90-37

§ 53410

§ 53420

§ 53430

community college health service professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Section 87001, 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).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for hire as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

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

(b) 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 bachelor's degree from an accredited institution, 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 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; or

(2) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53420. Minimum Qualifications for Instructional or Student Services Administrators.

The minimum qualifications for hire as an instructional or student services administrator shall be all of the following:

(a) Possession of a master's degree.

(b) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53430. Equivalencies.

(a) No one may be hired to serve as a community college faculty member, instructional administrator, or student services administrator unless

the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in sections 53410 or 53420. 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 judgement of the academic senate to determine that each individual employed under the authority granted by this section possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in sections 53410 or 53420.

(c) 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 it 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 process in existence on January 1, 1989, shall remain in effect.

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).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in Part 41 (commencing with Section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, 68090 and 71020, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of Chapter 1 (Sections 54000, 54001, 54100, 54101) and new Chapter 1 (Sections 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of Chapter 1 (Sections 54000-54082, not consecutive) and new Chapter 1 (Sections 54000-54070, not consecutive) filed 11-22-82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.

§ 54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, 68090 and 71020, Education Code. Reference: Section 68023, Education Code.

§ 54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a

Register 90-49

§ 53412

§ 53414

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).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code sections 87001, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this chapter shall become effective in accordance with the provisions of section 70 of chapter 973 of the Statutes of 1989.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 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).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a community college 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) "Instructional or student services administrator" means an administrator who is employed in a 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. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student service managers.

(c) "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 in section 53410. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Section 87001, 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).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for hire as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

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

(b) 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 bachelor's degree from an accredited institution, 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 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; or

(2) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53412. Minimum Qualifications for Instructors of Noncredit Courses.

The minimum qualifications for hire as a community college faculty member teaching a noncredit course shall be satisfied by meeting both of the following requirements:

(a) Successful completion of four years of higher education with a major in a discipline, or completion of four years of occupational experience in a discipline; and

(b) Certification by the district that the applicant has adequate training and experience to teach the classes for which he or she is to be employed.

The provisions of this section shall become inoperative on July 1, 1991.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1993, the minimum qualifications for hire as a community college faculty member teaching credit or noncredit apprenticeship courses shall be satisfied by meeting both of the following requirements:

(1) Six (6) years of occupational experience in an apprenticeable trade, including at least two years at the journeyman level; and

(2) Sixty (60) clock hours or four (4) semester units of instruction in an accredited institution of higher education 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, 1993, the minimum qualifications for hire as a community college faculty member teaching credit apprenticeship courses shall be satisfied by meeting one of the following three requirements.

(1) Possession of an associate degree, plus four (4) years of occupational experience in the subject matter area to be taught; or

(2) Six (6) 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, from an accredited institution; or

(3) Employment and service as a community college apprenticeship instructor prior to January 1, 1991; provided that such service was authorized pursuant to minimum qualifications that pertained at the time of hire.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 53414. Minimum Qualifications for Disabled Students Programs and Services Employees.

(a) The minimum qualifications for hire 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 from an accredited institution, or equivalent foreign degree, in rehabilitation counseling, or

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in special education, and twenty four (24) or more semester units in upper division graduate level course work in counseling, guidance, student personnel, psychology, or social work; or

(3) A master's degree in counseling, guidance, student personnel, or psychology, or career development, or social welfare, and twelve (12) 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 hire as a community college faculty member teaching adapted physical education shall be satisfied by meeting the following requirements:

(1) Possession of a master's degree in physical education, with fifteen (15) semester units of graduate study in adapted physical education; or

(2) A bachelor's degree in physical education with a master's degree in occupational therapy.

(c) The minimum requirements for hire to work with students with speech and language disabilities shall be satisfied by meeting the following requirements:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in speech pathology and audiology, or communication disorders; and

(2) Licensure of eligibility for licensure as a speech pathologist or audiologist by the California Board of Medical Quality Assurance.

(d) Except as provided in subsections (a) through (c) above, the minimum requirements for hire as a community college faculty member to provide specialized instruction for students with disabilities shall be satisfied by meeting the following requirements:

(1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the category of disability or special education, or education, or psychology, or educational psychology or rehabilitation counseling; and

(2) Fifteen (15) semester units of 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.

NOTE: Authority cited: Sections 70901(b)(1)(B), 78600.5 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78600.5 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).

§ 53420. Minimum Qualifications for Instructional or Student Services Administrators.

The minimum qualifications for hire as an instructional or student services administrator shall be all of the following:

(a) Possession of a master's degree.

(b) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53430. Equivalencies.

(a) No one may be hired to serve as a community college faculty member, instructional administrator, or student services administrator unless the governing board determines that he or she possesses qualifications that are at least equivalent to the minimum qualifications specified in sections 53410 or 53420. 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 judgement of the academic senate to determine that each individual employed under the authority granted by this section possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in sections 53410 or 53420.

(c) 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 it 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 process in existence on January 1, 1989, shall remain in effect.

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).

Register 91-23

§ 53130

the preceding school year and certifying that in connection with each such employee all of the provisions of Education Code Section 87401 and this subchapter have been satisfied.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

The provisions of this section are to implement section 87782 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) Accumulated Sick Leave. As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code section 87781 but is unused.

(b) Transfer. A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code section 87782, 87783, and 87785, provided the certificated or academic employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows:

(1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records,

(3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave that the person would have earned had he or she been an employee of the state.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Article 2. Academic Senates

§ 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. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 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 is, as the representative of the faculty, 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" shall also constitute 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
- (7) Faculty roles and involvement in accreditation processes, including selfstudy and annual reports
- (8) Policies for faculty professional development activities
- (9) Processes for program review
- (10) Processes for institutional planning and budget development, and
- (11) Other academic and professional matters as mutually agreed upon between the governing board and the academic senate.

(d) "Consult collegially" means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:

- (1) Relying primarily upon the advice and judgment of the academic senate; or
- (2) That the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment of NOTE filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Amendment 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).

§ 53201. Academic Senate or Faculty Council.

In order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters, an academic senate may be established at the college and/or district level.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 70901 and 70902, Education Code.

HISTORY

1. Amendment filed 2-10-78; effective thirtieth day thereafter (Register 78, No. 6).

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(b) The final computation of the number of full-time instructors actually required shall be based upon full-year data submitted by districts.
NOTE: Authority cited: Sections 66700, 70901, and 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).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to section 53312 for the 1989-90 and 1990-91 fiscal years. To the extent that 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 costs times the deficiency in the number of FTF.

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).

Subchapter 4. Minimum Qualifications

Article 1. Scope and Definitions

§ 53400. Scope.

This chapter implements and should be read in conjunction with the requirements of Education Code sections 87001, 87356 and 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this chapter shall become effective in accordance with the provisions of section 70 of chapter 973 of the Statutes of 1989.

NOTE: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 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).

§ 53402. Definitions.

(a) "Administrator" means any person employed by the governing board of a community college 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) "Instructional or student services administrator" means an administrator who is employed in a 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. Instructional and student services administrators include, but are not limited to, chancellors, presidents, and instructional or student service managers.

(c) "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 in section 53410. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Section 87001, 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).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for hire as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

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

(b) 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 bachelor's degree from an accredited institution, 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 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; or

(2) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53412. Minimum Qualifications for Instructors of Noncredit Courses.

The minimum qualifications for hire as a community college faculty member teaching a noncredit course shall be satisfied by meeting both of the following requirements:

(a) Successful completion of four years of higher education with a major in a discipline, or completion of four years of occupational experience in a discipline; and

(b) Certification by the district that the applicant has adequate training and experience to teach the classes for which he or she is to be employed.

The provisions of this section shall become inoperative on July 1, 1992.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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 of section 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).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1993, the minimum qualifications for hire as a community college faculty member teaching credit or noncredit apprentice-

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- § 53410
- § 53412
- § 53414
- § 53420
- § 53430

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).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to Section 53312 for the 1989-90 and 1990-91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's allocation for 1991-92 by an amount equivalent to the average replacement costs times the deficiency in the number of FTF. To the extent a district hires the additional FTF in subsequent fiscal years, the reduction made to the district's revenue shall be restored.

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).

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 87539 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter shall become effective in accordance with the provisions of Section 70 of Chapter 973 of the Statutes of 1989.

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).

§ 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, commu-

nity 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 nonsupervisory, 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).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for service as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

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

(b) 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 bachelor's degree from an accredited institution, 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 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; or

(2) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53412. Minimum Qualifications for Instructors of Noncredit Courses.

The minimum qualifications for service as a community college faculty member teaching a noncredit course shall be satisfied by meeting both of the following requirements:

(a) Successful completion of four years of higher education with a major in a discipline, or completion of four years of occupational experience in a discipline; and

(b) Certification by the district that the applicant has adequate training and experience to teach the classes for which he or she is to be employed.

The provisions of this section shall become inoperative on July 1, 1992.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1993, 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 (6) years of occupational experience in an apprenticeable trade, including at least two years at the journeyman level; and
- (2) Sixty (60) clock hours or four (4) semester units of instruction in an accredited institution of higher education 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, 1993, the minimum qualifications for service as a community college faculty member teaching credit apprenticeship courses shall be satisfied by meeting one of the following three requirements.

- (1) Possession of an associate degree, plus four (4) years of occupational experience in the subject matter area to be taught; or
- (2) Six (6) 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, from an accredited institution; or
- (3) Employment and service as a community college apprenticeship instructor prior to January 1, 1991; provided that such service was authorized pursuant to minimum qualifications that pertained at the time of hire.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 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 from an accredited institution, or equivalent foreign degree, in rehabilitation counseling, or
- (2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in special education, and twenty four (24) 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, or psychology, or career development, or social welfare, and twelve (12) 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 adapted physical education shall be satisfied by meeting the following requirements:

- (1) Possession of a master's degree in physical education, with fifteen (15) semester units of upper division or graduate study in adapted physical education; or

- (2) A bachelor's degree in physical education with a master's degree in occupational therapy.

(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 from an accredited institution, or equivalent foreign degree, in speech pathology and audiology, or communication disorders; and
- (2) Licensure or eligibility for licensure as a speech pathologist or audiologist by the California Board of Medical Quality Assurance.

(d) Except as provided in subsections (a) through (c) above, the minimum requirements for service as a community college faculty member to provide specialized instruction for students with disabilities shall be satisfied by meeting the following requirements:

- (1) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in the category of disability or special education, or education, or psychology, or educational psychology or rehabilitation counseling; and
- (2) Fifteen (15) 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.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 53420. Minimum Qualifications for Educational Administrators.

The minimum qualifications for service as an educational administrator shall be all of the following:

- (a) Possession of a master's degree.
- (b) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 33430. Equivalencies.

(a) No one may be hired to serve as a community college faculty member, or educational administrator, or 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 judgement 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 article.

(c) 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 it 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 process in existence on January 1, 1989, shall remain in effect.

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).

§ 53530. Use of Bond Proceeds.

Any funds derived from the sale of the bonds issued by the former district shall be used for the acquisition, construction, or improvement of college property only in the territory which comprised the former district or to discharge the bonded indebtedness of the former district, except that if the bonded indebtedness is assumed by the new district, the funds may be used in any area of the new district for the purposes for which the bonds were originally voted.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 53540. Territory of District Becoming Part of Two or More Districts; Disposition of Records.

If all the territory of any district becomes part of two or more districts, and the inclusion in the two or more districts of the several portions of territory comprising the whole of the original district is effective for all purposes on the same date, the records of the original district shall be disposed of as follows:

(a) All records of the original district which are required by law to be kept on file shall be deposited with the governing board of the district which, after the reorganization has become effective for all purposes, has located within its boundaries the former office of the superintendent of the original district.

(b) Records of employees shall be transferred to the district thereafter employing the personnel or thereafter maintaining the last place of employment.

(c) Records of students shall be transferred to the district which, after the date on which the reorganization becomes effective for all purposes, maintains the college in which a student was last enrolled.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 1 (sections 54000-54082, not consecutive) and new chapter 1 (sections 54000-54070, not consecutive) filed 11-22-82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54001. Adoption of Rules and Regulations; Publication; Uniformity.

The residence determination date and a summary of the rules and regulations adopted by the Board of Governors and district governing boards pursuant to chapter 1 part 41 of division 5 of the Education Code, commencing with section 68000 shall be published in the district catalogs. The statute law and the rules and regulations adopted by the Board of Governors and the district shall be made available to the students at each district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54002. Residence Determination Date.

"Residence determination date" is that day immediately preceding the opening day of instruction of the quarter, semester, or other session as set by the district governing board, during which the student proposes to attend a college.

NOTE: Authority cited: Sections 66700, 68023, 68044, and 70901, Education Code. Reference: Section 68023, Education Code.

HISTORY

1. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54010. Residence Classification Procedures.

(a) Residence classification shall be made for each student at the time applications for admission are accepted and whenever a student has not been in attendance for more than one semester or quarter. A student previously classified as a nonresident may be reclassified as of any residence determination date.

(b) The student shall be required to present evidence of physical presence in California, intent to make California the home for other than a temporary purpose and, if the student was classified as a nonresident in the preceding term, financial independence.

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§ 53403

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of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(c) **Released/Reassigned Time.** The hours of a full-time instructor on released or reassigned time shall be counted as if the instructor was teaching full-time and had not been provided released or reassigned time. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(d) **Unpaid Leave.** The hours of a full-time instructor on unpaid leave shall be counted as if the instructor was teaching full time and had not been provided with unpaid leave. The hours of instruction shall thereby be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

(e) **Teaching by Others.** The hours of instruction taught by counselors, librarians, classified staff or administrators who are appropriately certified to teach shall, under the following conditions, be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors:

(1) Only the actual hours of teaching by such individuals shall be included;

(2) The hours of teaching by such individuals must be part of a regular contract, and not taught as an overload assignment.

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. Editorial correction of printing error in article 2 heading (Register 91, No. 31).

§ 53311. Base Year.

For purposes of this chapter, fiscal year 1988-89 shall be the base year from which improvement in the percentage of hours of credit instruction taught by full-time instructors shall be measured.

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).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute and report to each community college district the number of full-time faculty (FTF) which are to be secured through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for part-time instructors times the statewide average full-time teaching load).

(c) If the quotient 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. **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).

§ 53314. Report to Districts.

(a) By March 15th of each year, the Chancellor shall report to each district an estimate of the number of FTF to be secured based upon the appropriation of revenues contained in the annual Budget Bill.

(b) The final computation of the number of full-time instructors actually required shall be based upon full-year data submitted by districts.

NOTE: Authority cited: Sections 66700, 70901, and 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).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to Section 53312 for the 1989-90 and 1990-91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's allocation for 1991-92 by an amount equivalent to the average replacement costs times the deficiency in the number of FTF. To the extent a district hires the additional FTF in subsequent fiscal years, the reduction made to the district's revenue shall be restored.

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).

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 shall become effective in accordance with the provisions of Section 70 of Chapter 973 of the Statutes of 1989.

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).

§ 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 cred-

it 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).

§ 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 nonsupervisory, nonmanagement community college certification qualifications.

NOTE: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 67002 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.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 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.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

Article 2. Qualifications and Equivalencies

§ 53410. Minimum Qualifications for Instructors of Credit Courses.

The minimum qualifications for service as a community college faculty member teaching any credit course shall be satisfied by meeting any one of the following requirements:

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

(b) 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 bachelor's degree from an accredited institution, 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 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; or

(2) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 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, mechanics, 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 in English, literature, comparative literature, composition, linguistics, speech, creative writing, or journalism; or a bachelor's in any discipline and twelve semester units of coursework in an accredited institution of higher education in teaching reading.

(d) For a noncredit course in citizenship, a bachelor's 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 in teaching English as a second language, or teaching English to speakers of other languages.

(2) A bachelor's 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 with any of the majors specified in subparagraph (2) above; and one year of experience teaching ESL in an accredited institu-

tion; 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 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 in home economics, life management, family and consumer studies, dietetics, food management, interior design, or clothing and textiles; or an associate 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:

(A) Thirty hours or two 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 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 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.

(k) In addition to other minimum qualifications specified in this section, the minimum qualifications for a faculty member teaching a noncredit course shall include appropriate valid certification to practice or licensure or its equivalent, if available.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1993, 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 (6) years of occupational experience in an apprenticeship trade, including at least two years at the journeyman level; and

(2) Sixty (60) clock hours or four (4) semester units of instruction in an accredited institution of higher education 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, 1993, the minimum qualifications for service as a community college faculty member teaching credit apprenticeship courses shall be satisfied by meeting one of the following three requirements.

(1) Possession of an associate degree, plus four (4) years of occupational experience in the subject matter area to be taught; or

(2) Six (6) 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, from an accredited institution; or

(3) Employment and service as a community college apprenticeship instructor prior to January 1, 1991; provided that such service was authorized pursuant to minimum qualifications that pertained at the time of hire.

(c) On or after July 1, 1993, 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 an accredited institution of higher education 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(b)(1)(B) 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).

§ 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 from an accredited institution, or equivalent foreign degree, in rehabilitation counseling, or

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in special education, and twenty four (24) 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, or psychology, or career development, or social welfare; and either twelve (12) 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 satisfied by meeting the following requirements:

(1) Possession of a master's degree in physical education, with fifteen (15) semester units of upper division or graduate study in adapted physical education; or

(2) A bachelor's degree in physical education with a master's degree in occupational therapy.

(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 from an accredited institution, or equivalent foreign degree, in speech pathology and audiology, or 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 from an accredited institution, or equivalent foreign degree, in the category of disability or special education, or education, or psychology, or educational psychology or rehabilitation counseling; and

(2) Fifteen (15) 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 coursework 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(b)(1)(B) 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).

§ 53420. Minimum Qualifications for Educational Administrators.

The minimum qualifications for service as an educational administrator shall be all of the following:

- (a) Possession of a master's degree.
- (b) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53430. Equivalencies.

(a) No one may be hired to serve as a community college faculty member, or educational administrator, or 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 judgement 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 article.

(c) 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 it 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 process in existence on January 1, 1989, shall remain in effect.

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).

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. A student employed as a faculty intern shall be employed as

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(1) 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; or

(2) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 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 in English, literature, comparative literature, composition, linguistics, speech, creative writing, or journalism; or a bachelor's in any discipline and twelve semester units of coursework in an accredited institution of higher education in teaching reading.

(d) For a noncredit course in citizenship, a bachelor's 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 in teaching English as a second language, or teaching English to speakers of other languages.

(2) A bachelor's 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 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 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 in home economics, life management, family and consumer studies, dietetics, food management, interior design, or clothing and textiles; or an associate 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 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 coursework or classwork in understanding the needs of the older adult, taken at an accredited institu-

tion 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 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.

(k) In addition to other minimum qualifications specified in this section, the minimum qualifications for a faculty member teaching a noncredit course shall include appropriate valid certification to practice or licensure or its equivalent, if available.

NOTE: Authority cited: Sections 70901(b)(1)(B) 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 inadvertent omission of subsection (h)(1) (Register 92, No. 45).

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

(a) Until July 1, 1993, 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 (6) years of occupational experience in an apprenticeable trade, including at least two years at the journeyman level; and

(2) Sixty (60) clock hours or four (4) semester units of instruction in an accredited institution of higher education 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, 1993, the minimum qualifications for service as a community college faculty member teaching credit apprenticeship courses shall be satisfied by meeting one of the following three requirements.

(1) Possession of an associate degree, plus four (4) years of occupational experience in the subject matter area to be taught; or

(2) Six (6) 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, from an accredited institution; or

(3) Employment and service as a community college apprenticeship instructor prior to January 1, 1991; provided that such service was authorized pursuant to minimum qualifications that pertained at the time of hire.

(c) On or after July 1, 1993, 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 an accredited institution of higher education 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(b)(1)(B) 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)-(e)(2) filed 6-26-92; operative 7-27-92 (Register 92, No. 26).

§ 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 from an accredited institution, or equivalent foreign degree, in rehabilitation counseling, or

(2) Possession of a master's degree from an accredited institution, or equivalent foreign degree, in special education, and twenty four (24) 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, or psychology, or career development, or social welfare; and either twelve (12) 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 satisfied by meeting the following requirements:

(1) Possession of a master's degree in physical education, with fifteen (15) semester units of upper division or graduate study in adapted physical education; or

(2) A bachelor's degree in physical education with a master's degree in occupational therapy.

(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 from an accredited institution, or equivalent foreign degree, in speech pathology and audiology, or 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 from an accredited institution, or equivalent foreign degree, in the category of disability or special education, or education, or psychology, or educational psychology or rehabilitation counseling; and

(2) Fifteen (15) 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 coursework 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(b)(1)(B) 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).

§ 53420. Minimum Qualifications for Educational Administrators.

The minimum qualifications for service as an educational administrator shall be all of the following:

(a) Possession of a master's degree.

(b) 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.

NOTE: Authority cited: Sections 66700, 70901 and 87356, Education Code. Reference: Section 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).

§ 53430. Equivalencies.

(a) No one may be hired to serve as a community college faculty member, or educational administrator, or 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 judgement 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 article.

(c) 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 it 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 process in existence on January 1, 1989, shall remain in effect.

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).

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. A student employed as a faculty intern shall be employed as

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§ 53130

- 2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
- 3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
- 4. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

- 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
- 2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
- 3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

- 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
- 2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
- 3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

- 1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
- 2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
- 3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

The provisions of this section are to implement section 87782 of the Education Code relative to the manner in which accumulated sick leave shall be certified by one employer to another when an employee changes employment from one employer to another.

(a) Accumulated Sick Leave. As used in this section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code section 87781 but is unused.

(b) Transfer. A transfer of accumulated sick leave from a school district or office of the county superintendent of schools to another school district or office of the county superintendent of schools or from either to the Chancellor's Office; or a transfer from the Chancellor's Office to a school district or county superintendent of schools is authorized by Education Code section 87782, 87783, and 87785, provided the certified or academic employee meets the eligibility requirements stated therein.

Transfer shall be accomplished as follows:

(1) the person who accumulated the sick leave or the new employing agency using a form prescribed by the Chancellor's Office requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) upon receipt of the request the former employing agency forthwith transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is in charge with maintaining employee attendance records,

(3) the new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code section 87785, which provides that the accumulated sick leave transferred may not exceed that amount of accumulated sick leave

that the person would have earned had he or she been an employee of the state.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

- 1. New subchapter 1.5 (section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
- 2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
- 3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
- 4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

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. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
- 2. New article 1.6 heading filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

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 is, as the representative of the faculty, 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" shall also constitute 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
- (7) Faculty roles and involvement in accreditation processes, including selfstudy and annual reports
- (8) Policies for faculty professional development activities
- (9) Processes for program review
- (10) Processes for institutional planning and budget development, and
- (11) Other academic and professional matters as mutually agreed upon between the governing board and the academic senate.

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- § 53403
- § 53406
- § 53407
- § 53410
- § 53410.1
- § 53412
- § 53414
- § 53415
- § 53416
- § 53417
- § 53420
- § 53430

taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors. The hours of instruction of replacement faculty, whether full-time or part-time, shall be excluded from both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term of the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025.

(h) Librarians. A number of hours equivalent to the number of hours taught by a full-time instructor shall be included in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors for each full-time librarian hired in excess of the number of full-time librarians in the previous year's base. A comparable number of hours shall be counted for each year thereafter unless the position(s) is vacant or eliminated. This subdivision shall become inoperative on July 1, 1994, unless a later-adopted regulation deletes or extends this date.

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 article 2 heading (Register 91, No. 31).
3. New subsections (f)-(h) and amendment of NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).
4. Amendment of subsection (h) filed 2-4-93; operative 3-6-93 (Register 93, No. 6).

§ 53311. Base Data.

For purposes of this subchapter, "base data" means the base percentage of hours of credit instruction taught by full-time instructors and the base number of full-time faculty required to be maintained or additional hires to be made by the fall of the subsequent year. This data shall be determined from the current year's fall management information system staff data submission to the Chancellor's office.

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 section heading, text and NOTE filed 8-19-92; operative 9-18-92 (Register 92, No. 34).

§ 53312. Additional Full-Time Faculty Positions.

(a) The Chancellor shall compute each community college district's number of full-time faculty (FTF) which are to be secured in accordance with the provisions of Section 51025, as the result of additional funded growth in credit full-time equivalent students and through the use of the prescribed portion of program improvement revenue allocated to each district.

(b) This computation shall be made by dividing the applicable portion of program improvement revenue (0 percent, 33 percent, or 40 percent of the program improvement allocation), by the statewide average "replacement cost" (a figure which represents the statewide average faculty salary plus benefits, minus the statewide hourly rate of compensation for 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 per-

cent 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).

§ 53314. Report to Districts.

The Chancellor shall report to districts by Spring of each year the estimated number of FTF each district must secure by the following Fall 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).

Article 3. Enforcement

§ 53320. Funding Reductions.

On or before December 31, 1991, the Chancellor shall determine the extent to which each district, by September 30, 1991, has hired the number of FTF determined pursuant to Section 53312 for the 1989-90 and 1990-91 fiscal years. To the extent that cumulative number of FTF have not been retained, the Chancellor shall reduce the district's allocation for 1991-92 by an amount equivalent to the average replacement costs times the deficiency in the number of FTF. To the extent a district hires the additional FTF in subsequent fiscal years, the reduction made to the district's revenue shall be restored.

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).

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).

§ 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).

§ 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 nonsupervisory, 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.

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).

§ 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).

§ 53407. Discipline 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 degrees, 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: Section 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).

§ 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:

<i>Discipline</i>	<i>License or Certification</i>
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 qualifications; 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 inadvertent 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)-(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 process in existence on January 1, 1989, shall remain in effect.

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).

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. 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.

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).

§ 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 community college efforts toward building a diverse and representative faculty. In order to accomplish this purpose, the internship program shall place special emphasis on locating and attracting qualified graduate students who are members of underrepresented groups.

NOTE: Authority cited: Sections 70901, 87105 and 87487, Education Code. Reference: Sections 87101 and 87487, Education Code.

HISTORY

1. New section filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 53502. Minimum Qualifications.

A student employed as a faculty intern shall meet the following minimum qualifications:

(a) Faculty interns shall be enrolled in a master's or doctoral program at the University of California, the California State University, or any other accredited institution of higher education subject to Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code, and shall have completed at least one-half of the coursework, or the equivalent, in that graduate program.

(b) Faculty interns shall only be assigned to teach or to serve in a discipline in which they would be legally qualified to teach or render service upon completion of their graduate studies. A faculty intern shall be limited to two years of participation in the program.

(c) Each faculty intern shall serve under the direct supervision of a mentor who is legally qualified to teach the course or render the service that the faculty intern is providing. The district governing board shall ensure that faculty mentors provide substantial direct in-class supervision and evaluation of interns' teaching capabilities. The mentor shall have no other assigned duties during the time that the faculty intern is teaching or rendering service. The mentor is responsible for providing direct monitoring and systematic contact with the faculty intern.

NOTE: Authority cited: Sections 70901 and 87487, Education Code. Reference: Sections 70901 and 87487, Education Code.

HISTORY

1. New section filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 53530. Use of Bond Proceeds.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Renumbering and amendment of former section 53530 to section 59422 filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53540. Territory of District Becoming Part of Two or More Districts; Disposition of Records.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Renumbering and amendment of former section 53540 to section 59424 filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 1 (sections 54000-54082, not consecutive) and new chapter 1 (sections 54000-54070, not consecutive) filed 11-22-82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.
4. Amendment of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).

§ 54001. Adoption of Rules and Regulations; Publication; Uniformity.

The residence determination date and a summary of the rules and regulations adopted by the Board of Governors and district governing boards pursuant to chapter 1, part 41 of division 5 of the Education Code, commencing with section 68000, shall be published in the district catalogs and/or addenda thereto. The applicable Education Code provisions and the rules and regulations adopted by the Board of Governors and the district shall be made available to the students at each district.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Amendment filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

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(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 degrees, 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).

§ 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 qualifications; 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 insti-

tution 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 inadvertent 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:

Register 94-38

§ 53406

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), 78200 through 78203 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 nonsupervisory, 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. Discipline 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 degrees, 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).

§ 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:

<i>Discipline</i>	<i>License or Certification</i>
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 qualifications; 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 inadvertent 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 apprenticeship 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)-(c)(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 un-

der 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. 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).

§ 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 community college efforts toward building a diverse and representative faculty. In order to accomplish this purpose, the internship program shall place special emphasis on locating and attracting qualified graduate students who are members of underrepresented groups.

NOTE: Authority cited: Sections 70901, 87105 and 87487, Education Code. Reference: Sections 87101 and 87487, Education Code.

HISTORY

1. New section filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 53502. Minimum Qualifications.

A student employed as a faculty intern shall meet the following minimum qualifications:

(a) Faculty interns shall be enrolled in a master's or doctoral program at the University of California, the California State University, or any other accredited institution of higher education subject to Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code, and shall have completed at least one-half of the coursework, or the equivalent, in that graduate program.

(b) Faculty interns shall only be assigned to teach or to serve in a discipline in which they would be legally qualified to teach or render service upon completion of their graduate studies. A faculty intern shall be limited to two years of participation in the program.

(c) Each faculty intern shall serve under the direct supervision of a mentor who is legally qualified to teach the course or render the service that the faculty intern is providing. The district governing board shall ensure that faculty mentors provide substantial direct in-class supervision and evaluation of interns' teaching capabilities. The mentor shall have no other assigned duties during the time that the faculty intern is teaching or rendering service. The mentor is responsible for providing direct monitoring and systematic contact with the faculty intern.

NOTE: Authority cited: Sections 70901 and 87487, Education Code. Reference: Sections 70901 and 87487, Education Code.

HISTORY

1. New section filed 4-3-92; operative 5-4-92 (Register 92, No. 15).

§ 53530. Use of Bond Proceeds.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Renumbering and amendment of former section 53530 to section 59422 filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53540. Territory of District Becoming Part of Two or More Districts; Disposition of Records.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. Adoption of section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 23).
2. Renumbering and amendment of former section 53540 to section 59424 filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Chapter 5. Students

Subchapter 1. Student Residence Classification

§ 54000. Uniform Residency Requirements.

The provisions of this chapter implement and should be read in conjunction with the Uniform Residency Requirements contained in part 41 (commencing with section 68000) of the Education Code.

NOTE: Authority cited: Sections 66700, 68044, and 70901, Education Code. Reference: Part 41 (commencing with Section 68000), Education Code.

HISTORY

1. Repealer of chapter 1 (sections 54000, 54001, 54100, 54101) and new chapter 1 (sections 54000 through 54082, not consecutive) filed 6-25-73 as an emergency; effective upon filing. Certificate of Compliance included (Register 73, No. 26). For prior history, see Register 70, No. 16.
2. Amendment of NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Repealer of chapter 1 (sections 54000-54062, not consecutive) and new chapter 1 (sections 54000-54070, not consecutive) filed 11-22-82; effective thirtieth day thereafter (Register 82, No. 48). For prior history, see Registers 79, No. 46; 77, No. 45; 74, No. 45; 74, No. 10; and 73, No. 44.

Register 95-19

§ 53130

2. Repealer filed 3-26-92; operative 4-24-92 (Register 92, No. 17).

Subchapter 2. Certificated Positions

Article 1. Special Non-Credentialed Employees

§ 53100. Prerequisites for Employment Under Education Code Section 87401.

NOTE: Authority cited: Sections 71020, 71064, and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Renumbering of chapter 1 (sections 53100-53205) to chapter 2 (sections 53100-53205) filed 7-19-77; effective thirtieth day thereafter (Register 77, No. 30).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53101. Processing of Fingerprint Cards.

NOTE: Authority cited: Sections 71020, 71064, 87220 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53102. Cause for Dismissal.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

§ 53103. Report of Persons Employed.

NOTE: Authority cited: Sections 71020, 71068 and 87401, Education Code. Reference: Sections 71020 and 87401, Education Code.

HISTORY

1. Amendment filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
2. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
3. Repealer filed 5-15-93; operative 6-4-93 (Register 93, No. 25).

Article 1.5. Sick Leave Transfer

§ 53125. Transfer of Accumulated Sick Leave.

This Section prescribes the manner in which the amount of accumulated sick leave is certified for transfer under Sections 87782, 87783, and 87785 of the Education Code.

(a) As used in this Section, accumulated sick leave means a leave of absence for illness or injury that is earned under Education Code Section 87781 but is unused.

(b) Transfer shall be certified as follows:

(1) The person who accumulated the sick leave or the new employing agency requests the former employing agency to send the new employing agency a written statement of the employee's accumulated sick leave,

(2) Upon receipt of the request, the former employing agency transmits to the new employing agency a statement of the person's accumulated sick leave certified to be true and correct by the officer or employee of the former employing agency who is charged with maintaining employee attendance records,

(3) The new employing agency credits the person with the accumulated sick leave set forth in the certified statement. Any transfer of sick leave to the Chancellor's Office shall be subject to the limitations specified by Education Code Section 87785.

NOTE: Authority cited: Sections 70901, 71024 and 87782, Education Code. Reference: Sections 87781, 87782, 87783 and 87785, Education Code.

HISTORY

1. New subchapter 1.5 (section 53125) filed 4-26-74; effective thirtieth day thereafter (Register 74, No. 17).
2. Amendment of section and NOTE filed 11-4-77; effective thirtieth day thereafter (Register 77, No. 45).
3. Amendment filed 4-27-83; effective thirtieth day thereafter (Register 83, No. 18).
4. 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).
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. Editorial correction of HISTORY 4 (Register 95, No. 19).

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;

Register 96-40

§ 53410

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 qualifications; 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 lan-

guage, 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 inadvertent 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 spe-

cifically 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)-(f)(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 per-

son 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.

(c) To enhance community college efforts toward building a diverse and representative faculty. In order to accomplish this purpose, the internship program shall place special emphasis on locating and attracting qualified graduate students who are members of underrepresented groups.

NOTE: Authority cited: Sections 70901, 87103 and 87487, Education Code. Reference: Sections 87101 and 87487, Education Code.

HISTORY

1. New section filed 4-3-92; operative 5-4-92 (Register 92, No. 15).
2. New subsection (b) and subsection relettering filed 9-3-96; operative 10-3-96. Submitted to OAL for printing only (Register 96, No. 40).

§ 53502. Minimum Qualifications.

A student employed as a faculty intern shall meet the following minimum qualifications:

(a) For those disciplines in which a master's degree is required, faculty interns shall be enrolled in a master's or doctoral program at the University of California, the California State University, or any other accredited institution of higher education subject to Chapter 3 (commencing with Section 94300) of Part 59 of the Education Code, and shall have completed at least one-half of the coursework, or the equivalent, in that graduate program.

(b) For those disciplines for which a master's degree is not expected or required, the faculty intern shall possess any license or certificate required to do that work and (1) be within one year of completing the associate degree and have six years industry experience in the discipline, or (2) have completed the associate degree and have completed five years of industry experience in that discipline.

(c) Faculty interns shall only be assigned to teach or to serve in a discipline in which they would be legally qualified to teach or render service upon completion of their graduate studies or associate degree and six years of industry experience in that discipline. A faculty intern shall be limited to two years of participation in the program.

(d) Each faculty intern shall serve under the direct supervision of a mentor who is legally qualified to teach the course or render the service that the faculty intern is providing. The district governing board shall ensure that faculty mentors provide substantial direct in-class supervision and evaluation of interns' teaching capabilities. The mentor shall have no other assigned duties during the time that the faculty intern is teaching or

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JUN 04 2008

COMMISSION ON
STATE MANDATES

June 3, 2008

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: No. CSM. 02-TC -27
Employment of College Faculty & Administrators

Dear Ms. Higashi:

On November 20, 2007, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the history of the Title 5, CCR, sections included in the test claim, at the request of the Commission staff.

This letter transmits, on behalf of the test claimants, the list of registers and relevant section numbers, in the form of an amended attachment page to the CSM 2 form.

Sincerely,



Keith B. Petersen

C: Douglas Brinkley, Vice-Chancellor
Finance and Administration
State Center Community College District
1525 East Weldon
Fresno, CA 93704-6398

Amended Attachment to COSM Form CSM 2 (1/91)
 02-TC-27 Test Claim of Santa Monica Community College District
 Chapter 124, Statutes of 2000
Employment of College Faculty and Administrators

Statutes

Chapter 124, Statutes of 2000
 Chapter 506, Statutes of 1993
 Chapter 470, Statutes of 1981

Chapter 1023, Statutes of 1998
 Chapter 1302, Statutes of 1990

Chapter 758, Statutes of 1995
 Chapter 973, Statutes of 1988

Education Codes

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

California Code of Regulations Registers

Register 90-37

Title 5, Sections: 53400 53402 53410 53420 53430

Register 90-49

Title 5, Sections: 53412 53413 53414

Register 91-23

Title 5, Sections: 53130

Register 91-50

Title 5, Sections: 53412

Register 92-09

Title 5, Sections: 53400 53402 53410 53412 53413 53414 53420 53430

Register 92-26

Title 5, Sections 53401 53403 53404 53412 53414 53420 53430

Register 92-45

Title 5, Sections: 53412

Register 93-25

Title 5, Sections: 53130 53400 53401 53405

Register 93-42

Title 5, Sections: 53403 53404 53406 53407 53410 53410.1 53411 53412 53413 53414
 53415 53416 53417 53420 53430

Register 93-46

Title 5, Sections: 53410

Register 94-38

Title 5, Sections: 53400 53401 53404 53406 53430

Register 95-19

Title 5, Sections: 53130

Register 96-40

Title 5, Sections: 53410

Title 5, California Code of Regulations Originally Listed

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

STATE OF CALIFORNIA

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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March 11, 2004

RECEIVED

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

MAR 11 2004
**COMMISSION ON
STATE MANDATES**

Re: CSM 02-TC-27 Employment of College Faculty and Administrators
Santa Monica Community College District, Claimant
Education Code, sections 70901, 87356, 87357, 87358, 87359, 87360, 87360.1,
87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, and 87743.5
California Code of Regulations, title 5, sections 53130, 53403, 53406, 53407,
53410, 53410.1, 53412, 53414, 53416, 53417, 53420, and 53430

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above-referenced test claim in light of the following questions addressing key issues before the Commission:

Do the subject statutes or regulations result in a mandated new program or a mandated higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes or regulations impose a reimbursable state-mandated program upon local entities?

Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

This test claim ("Claim") alleges mandated costs reimbursable by the state for community college district activities related to the employment of academic employees (e.g., faculty), including the assessment of the qualifications of applicants for academic employment, academic employee evaluation, and addressing academic employee grievances. Test Claimant Santa Monica Community College District ("Claimant") alleges that reimbursable mandated costs arise from a variety of Education Code sections and regulations that appear in title 5 of the California Code of Regulations.

Given the number of statutes and regulations that are invoked by Claimant, and the fact that different potential reimbursement issues affect different provisions, we must address most provisions separately.

Education Code section 70901(b)(1)(B).

Claimant asserts that this section requires establishing and implementing minimum standards for the employment of academic and administrative staff.

This section cannot serve as the basis for a claim for at least two reasons.

First, the section does not apply to local districts. The section directs actions to be taken by the state Board of Governors of the California Community Colleges, not by local districts. Local districts cannot claim reimbursement for the cost of actions to be taken by the Board of Governors.

Second, Education Code section 70901(b)(1)(B) was originally enacted in 1969 (Stats. 1969, c. 1026, p. 1996) as section 200.11. When it was amended in 1970, it provided: "The board of governors shall establish minimum standards for the employment of academic and administrative staff in community colleges."

Section 200.11 was renumbered to section 71068 and subsequently to section 70901(b)(1)(B), all without any change in the language. "Costs mandated by the state" do not include costs associated with statutes that were enacted prior to January 1, 1975. (Government Code section 17514.) The requirements of section 70901(b)(1)(B) existed long before January 1, 1975, and therefore cannot be the basis for reimbursement.

Any Claim under this section should be rejected for the foregoing reasons.

Education Code section 87356.

Claimant asserts that section 87356 requires the Board of Governors to establish and maintain minimum qualifications for the hiring of faculty. It is not clear how Claimant believes this section creates any local mandate.

Section 87356 requires the Board of Governors of the California Community Colleges to adopt regulations regarding minimum qualifications for service as an academic employee of a community college district. Nothing in the section requires any conduct by the community college districts. Therefore, no local mandate is involved.

Moreover, subsection (b) confirms that the Legislature declared that no mandate was implicated because faculty compensation is established through collective bargaining or meet and confer processes.

Any Claim under this section should be rejected for the foregoing reasons.

Education Code section 87357(a)(1).

Claimant asserts that this section requires consulting with and advising the State Board of Governors regarding minimum qualifications for faculty and administrators.

Claimant is misinformed about this section. The section requires the Board of Governors (not community college districts) to consult with the statewide Academic Senate and with a statewide organization of administrators regarding faculty and administrator qualifications. Claimant is neither the statewide Academic Senate nor a statewide organization of administrators so neither of these directives to the Board of Governors affects Claimant in any way.

The section also requires the Board of Governors to consult with appropriate apprenticeship teaching faculty and labor organizations with regard to minimum qualifications for apprenticeship faculty. Claimant is not a labor organization.

Although the Board of Governors is required to consult with appropriate apprenticeship teaching faculty concerning minimum qualifications for apprenticeship instructors, there is no mandate that requires Claimant's apprenticeship teachers, to consult with the Board of Governors.

In short, Claimant does not identify any provision of this section that requires it to act. Any Claim under this section should be rejected.

Education Code section 87357(a)(2).

Claimant asserts that this section requires it to conduct or assist in any review of the appropriateness of minimum qualifications for the employment of faculty and administrators.

Claimant is misinformed about this section. The section mandates the Board of Governors of the California Community Colleges (not Claimant or any other community college district) to establish a process for reviewing minimum qualifications. The process provides for the assistance of representative groups of faculty, administrators, students, and trustees. Particular emphasis is on the participation of academic senates, bargaining organizations, and state-wide faculty associations; Claimant is none of these.

The section includes no mandate that either Claimant or any other particular community college district participate in the Board of Governors' review. If Claimant is asked to participate, it has the option to decline. To the extent that participation in such a review is elective, there is no mandate.

The California Supreme Court recently addressed the circumstances that will give rise to a mandate for purposes of reimbursement. (*Department of Finance v. Commission on State Mandates*, Kern High School, Real Party in Interest, 134 Cal.Rptr. 2d 237 (2003).) In that case, the Kern High School District sought reimbursement for the costs of preparing notices and agenda items related to certain programs it offered. The Supreme Court found that no mandates exist where a district voluntarily participates in a program.

The California Supreme Court noted that where an entity "elects" to participate in a program, there is no legal compulsion at issue, and therefore, there is no mandated cost: "Accordingly, no reimbursable state

mandate exists with regard to any of these programs based upon a theory that such costs were incurred under legal compulsion." (*Id.*, at 252.)

Any claim under this section should be rejected.

Education Code section 87358.

Claimant asserts that this section requires its participation, as designated by the Board of Governors, in the review of each community college district's application of minimum qualifications to faculty and administrators.

The section does not require the Claimant's participation in the review of "each district's use of minimum qualifications." The section requires the Board of Governors to periodically designate a team (of faculty, administrators, and trustees) to review use of minimum qualifications by community college districts. At most, the section authorizes the Board of Governors to require Claimant to demonstrate that it has been properly applying minimum qualification standards when it hires its academic employees. Any cost associated with the section depends on when and if the Board of Governors requires Claimant to verify its use of minimum qualifications. If the Board of Governors determined to review Claimant's use of minimum qualifications, Claimant would have to cooperate in the review. However, our office has no record that the Board of Governors has ever conducted a review of Claimant with respect to this issue.

If the Board of Governors determined to review the use of some other community college district's use of minimum qualifications, it would request faculty, administrators, and trustees to volunteer for such a project, but no participation by any specific faculty, administrators or trustees is mandated by this section. Claimant has not alleged that any of its faculty, administrators, or trustees have ever participated in the review of any other district's use of minimum qualifications under this section. Even if Claimant made that allegation, it cannot demonstrate that the participation was anything but voluntary.

No mandate has been identified, and any claim under this section should be rejected.

Education Code section 87359.

Claimant asserts that section 87359 requires districts to ensure that persons who do not possess minimum qualifications for employment that are established by the Board of Governors pursuant to section 87356 possess qualifications that are equivalent to those minimum qualifications, and that equivalency processes are developed jointly with the academic senates.

Sections 87356 and 87359 were added to the Education Code as part of Chapter 2.5 of Part 51 of the Education Code. New Chapter 2.5 was added pursuant to SEC. 28 of Stats. 1988, c. 973. SEC. 70(d) of that same measure provided that none of the provisions added by SEC. 28, including Education Code sections 87356 and 87359, would become operative unless and until the Legislature provided adequate funding. In fact, the Legislature did provide funding.

Following the first infusion of funds for the activities described in sections 87356 and 87359, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87360.

Claimant asserts that subsection (a) of this section requires the development of hiring criteria, policies and procedures for new faculty, including hiring criteria that include a sensitivity toward and understanding of students. Claimant asserts that subsection (b) requires joint agreement between a district governing board and the academic senate regarding hiring criteria, policies and procedures for hiring new faculty.

Like section 87359 discussed above, section 87360 was added pursuant to SEC. 28 of Stats. 1988, c. 973, and therefore the requirements have already been funded.

Education Code section 87610.1(a), (b) and (d).

Claimant asserts that subsection (a) requires districts that collectively bargain tenure evaluation procedures to consult with the faculty's exclusive representative prior to engaging in collective bargaining. Claimant asserts that subsection (b) requires participation in arbitration procedures concerning the discontinuance of probationary status. Claimant asserts that subsection (d) requires compliance with a make-whole remedy if a district is found to have made an inappropriate decision regarding continuing a probationary faculty member.

Claimant has misread the requirement in (a). It requires faculty exclusive representatives (unions), not districts, to consult with the academic senate (not the exclusive representative) prior to collective bargaining. Subsection (a) includes no directives to districts.

Subsection (b) provides an optional mechanism for addressing decisions to discontinue the service of probationary faculty. Prior to the addition of section 87610.1, districts were required to follow section 87740 when they decided to terminate the probationary period of new faculty members. As explained below, section 87740 has been in the Education Code since prior to January 1, 1975, and it cannot be the basis for a mandated cost.

Section 87610.1 represents an alternative to the provisions of section 87740. Districts are never required to proceed under section 87610.1. As the section indicates, "If there is no contractual grievance procedure resulting in arbitration, these allegations [to challenge a decision not to continue a probationary faculty member] shall proceed to hearing in accordance with Section 87740." If districts choose to collectively bargain a grievance procedure that results in arbitration, section 87610.1 applies; otherwise, districts continue to follow section 87740. Because the decision to come under section 87610.1 is voluntary, the provisions of section 87610.1 cannot be the basis of a claim.

Section 87740 was originally added to the Education Code as section 13443 by stats of 1965. It established due process requirements for the nonhire of probationary employees, including notice to the affected employee and a hearing. When the Education Code was reorganized in 1976 to separate sections that applied to both K-12 districts and to community colleges into two distinct sets of statutes, the community college version of section 13443 became section 87740.

Accordingly, since the mid-1960's community college districts have had a process they are required to

follow when they chose not to continue the probationary employment of a faculty member. With the addition of 87610.1, they were given an optional alternative to the use of the procedures set out in section 87740.

Nothing in the section represents a mandate because the mechanism is purely optional, as an alternative to the processes of section 87740.

Another point should be made regarding subsection (d). Claimant asserts that this provision describes make-whole remedies for an improper probationary decision.

Claimant misunderstands the process. If the District improperly attempts to end the employment of a probationary employee, it will be responsible for making the employee whole, including back pay and benefits in the proper case. Claimant is apparently attempting to claim that the State should reimburse it when it takes improper action against an employee. Nothing mandates that Claimant take improper action against an employee, so the State is not responsible for the Claimant's conduct in this regard.

Furthermore, like sections 87356, 87359 and 87360, discussed above, section 87610.2 was added pursuant to SEC. 28 of Stats. 1988, c. 973, and therefore, it has already been funded for those districts that decided to embrace this option.

Finally, if both of the foregoing arguments for disallowing claims under this section are rejected, to the extent that it implicates collective bargaining, and districts collective bargaining activities are otherwise eligible for reimbursement, there should be no duplication of reimbursement under this claim and any collective bargaining claim.

The Claim related to this section should be rejected.

Education Code section 87611.

Claimant asserts that this section mandates legal costs of appearing in court to appeal or respond to an appeal concerning a grievance or hearing conducted under section 87610.1.

First, as noted above, Claimant is not required to proceed under section 87610.1; it chooses to be subject to this section.

Second, section 87611 makes no mention of any costs, it merely indicates that arbitration decisions regarding the release of a probationary faculty member can be judicially reviewed pursuant to section 1094.5 of the Code of Civil Procedure.

Finally, section 87611 does not establish the scope of legal actions that may be brought under Code of Civil Procedure section 1094.5; section 1094.5 has been in effect since stats of 1945, and the availability of judicial review under its provisions does not depend on the existence of section 87611. Judicial review under Code of Civil Procedure section 1094.5 has long been available for review of community college decisions concerning probationary employees. See, for example, *Stewart v. San Mateo Junior College District et al*, (1974) 37 Cal.App.3d 345.

The claim related to this section should be rejected.

Education Code section 87663.

Claimant asserts that (c) and (d) require evaluations of faculty using a peer review process on a departmental or divisional basis, that the process must address principles of affirmative action, and that peer reviewers represent the diversity of California and be sensitive to affirmative action principles without compromising quality and teaching excellence. Claimant asserts that subsection (e) requires a district that has bargained evaluation processes, to follow those processes.

Claimant asserts that subsection (f) requires districts that collectively bargain evaluation processes to consult with the faculty's exclusive representative prior to bargaining. Claimant misstates subsection (f). Subsection (f) requires the exclusive representative to consult with the academic senate prior to bargaining. Subsection (f) includes no district obligations.

Claimant asserts that subsection (g) requires faculty evaluations to include student evaluations to the extent practicable. Subsection (g) includes no mandate; it merely states that it is the intent of the Legislature that faculty evaluations include student evaluations if practicable. Statements of intent and possibilities are not legal mandates.

Education Code section 1009, was enacted by stats. of 1968, and it became section 72208 when the Education Code was reorganized in 1976. Section 72208 provided "the governing board of a community college district shall adopt and cause to be printed and made available to each certificated employee of the district reasonable rules and regulations providing for the evaluation of the performance of certificated employees in their assigned duties." Clearly, the obligation of districts to provide for the evaluation of faculty and administrators (both of which fell under the rubric of "certificated" employees) preceded the January 1, 1975, reimbursement date.

Additionally, districts have been required to periodically evaluate faculty since at least 1972. Former sections 13481 and section 13481.05 required evaluations of probationary faculty every academic year and of tenured faculty at least once every two academic years. Section 87663 reduced the number of evaluations by requiring the evaluation of tenured faculty once every three years rather than once every two years. Districts were also required to consult with the faculty regarding the evaluation procedures to be used.

Claimant asserts that subsection (e) requires districts to conduct evaluations in accordance with collective bargaining agreements if evaluation procedures have been bargained.

This claim must fail as a mandate for at least two reasons. First, only those districts that have chosen to bargain evaluation procedures are affected by this provision. As noted above, if a district elects to do something, it is not reimbursable as a mandate. (*Department of Finance v. Commission on State Mandate.*)

Second, this section adds nothing to common bargaining obligations if districts bargained evaluation procedures prior to the 1988 amendments. Similarly, if Claimant has made any mandate claims for collective bargaining activities, it should not also be paid under this process because that would be double recovery.

The final reason for rejecting this claim is that section 87663(c) and (d) were added to existing 87663 by SEC. 51 of AB 1725. SEC. 70(d) of AB 1725 provided that SEC. 51 (i.e., the amendments for Education Code section 87663) would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87663, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87714.

Claimant asserts that section 87714 was added in 1981 and that it requires community college district's chief executive officers to certify to the state Board of Governors that the district's academic employees possess the minimum qualifications for the positions they hold.

Section 87714 did not originate in 1981. It was added in 1959 as section 13566 to require district superintendents of schools to annually report that all employees in positions requiring certification qualification were properly certificated for the work performed. Because community college districts grew out of K-12 districts, the terminology has changed somewhat since 1959, but the underlying obligation has been in place.

When the statutes that applied to both K-12 and community college districts were separated through stats. 1976 c. 1010, section 13566 became section 87714 that provided:

"Each general superintendent of community colleges shall make an annual report of the schools under his jurisdiction to the county superintendent of schools on forms furnished by the board of governors which report shall include an affidavit that all employees in positions requiring certification qualifications were properly certificated for the work performed."

The version of section 87714 that was added in 1981 repealed the foregoing provision, but did not create a new mandate; the obligation to ensure that all academic employees were qualified has existed since stats. 1959.

Additionally, the early Education Code included specific duties to be performed by the superintendents of each community college district. These duties were added by stats. 1963, c. 629, p. 1514, as Education Code section 939 and were later renumbered to Education Code section 72413. Section 939, and later section 72413, required the chief executive officer to "determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him to serve in the position to which he is assigned." Section 72413 remained in effect until January 1, 1991.

Based on the foregoing, the obligations to verify that employees were qualified for their position existed since 1964 and the duty to report existed since 1960 in substantially the same form as current Education Code section 87714.

There is another aspect to this section that should further remove the ability to claim reimbursement: the current requirement for certification is only triggered if the Board of Governors requires the certification. We have no records indicating that we have required Claimant to submit the affidavit described in this

section.

For all the foregoing reasons, any Claim under this section should be rejected.

Education Code section 87740(c).

In Claimant's allegations concerning section 87610.1, it asserts that section 87740(c) requires a hearing process to consider a board's decision not to continue the employment of a probationary faculty member. As noted above in our report on section 87610.1, section 87740 was originally added to the Education Code as section 13443 by stats of 1965. That section established due process requirements for the nonrehire of probationary employees, including notice to the affected employee and a hearing. When the Education Code was reorganized in 1976 to separate sections that applied to both K-12 districts and to community college into two distinct sets of statutes, the community college version of section 13443 became section 87740.

Accordingly, since the mid-1960's community college districts have had a process they are required to follow when they choose not to continue the probationary employment of a faculty member. Nonsubstantive changes were made to section 87740 in 1995, to add formatting and to change the term "probationary" employee to "contract" employee. The requirement to notify the employee of the need to file a notice of defense, the discovery requirements, and the hearing descriptions were all included in section 13443 and required well before January 1, 1975.

Any claim under section 87740 should be rejected.

Education Code section 87743.2.

Claimant asserts that section 87743.2 requires it to establish and update faculty service areas within the scope of bargaining. The section also requires the exclusive representative to consult with the academic senate in developing its proposals.

Claimant overstates the requirement - there is no express updating requirement. The requirement is that by July 1, 1990, the faculty service areas were to be established.

Claimant also includes the requirement of consultation between the exclusive representative (union) and the academic senates, but neither of these entities is the Claimant; Claimant cannot secure reimbursement for activities that do not apply to it.

Section 87743.2 was added to the Education Code through SEC 53 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 53 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.2, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Finally, to the extent the Claimant has made any mandate claims for its collective bargaining activities in this area, it should not also be paid under this process because that would be double recovery.

Education Code section 87743.3.

Claimant asserts that this section requires it to receive and assess faculty applications for adding faculty

service areas for which faculty members qualify. Claimant also asserts that disputes over denials of faculty service areas must be addressed as grievances, or in the absence of a grievance process, by fair and equitable procedures.

Section 87743.3 was added to the Education Code through SEC 54 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 54 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.3, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87743.4.

Claimant asserts that this section requires it to maintain a permanent record of each faculty member's faculty service areas.

Section 87743.4 was added to the Education Code through SEC 55 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 55 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.4, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Education Code section 87743.5.

Claimant asserts that this section requires it to establish and update competency criteria for faculty members within the scope of meeting and negotiating under the Government Code.

Claimant does not accurately state the language of this section. The section requires that competency criteria were to have been established no later than July 1, 1990. There is no express updating requirement. The section further states that the development and establishment of competency criteria shall be within the scope of bargaining.

The section mandated certain conduct by July 1, 1990. Nothing in the section refers to updating activities.

Additionally, section 87743.5 was added to the Education Code through SEC 56 of AB 1725. SEC 70(d) of AB 1725 provides that SEC 56 would not be mandated unless and until the Legislature provided adequate funding. Funding was provided. Following the first infusion of funds for the activities described in section 87743.5, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

Additionally, if the Claimant has made any mandate claims for collective bargaining activities in this area, it should not also be paid under this process because that would be double recovery.

California Code of Regulations, title 5, section 53130 ("Title 5").

Claimant asserts that this section requires districts to adopt, print, and make available to each academic employee evaluation rules and regulations.

Prior to its adoption as a title 5 regulation, section 53130 appeared as section 72208 in the Education

Code. As noted above in our review of Education Code section 87663, prior to being renumbered in 1976, section 1009 provided that "the governing board of a community college district shall adopt and cause to be printed and made available to each certificated employee of the district reasonable rules and regulations providing for the evaluation of the performance of certificated employees in their assigned duties."

Whether in statute or regulation, the requirements that currently appear in section 53130 have existed without lapse since before January 1, 1975 and cannot be claimed for reimbursement under this process.

Title 5, section 53403.

Claimant asserts that this section requires it to establish and implement policies to recognize faculty who were qualified to teach in their respective discipline under the minimum qualifications when hired.

Claimant misunderstands the regulation. The section permits districts to "grandparent" employees in under the minimum qualifications or faculty service areas in effect when the employees were hired, even if those qualifications or faculty service areas later change. There is no mandate involved.

The section also verifies that persons who have credentials are authorized to serve under those credentials until they expire. Education Code section 87355 requires that persons who had credentials prior to the establishment of minimum qualifications for service in academic positions are entitled to serve under those credentials until they expire.

Since they were originally established well before January 1, 1975, credentials were to be recognized as minimum qualification for hire. The fact that credentials continue to establish minimum qualifications does not create any new mandate; they were always a standard of required qualifications and they continue to be such a standard. A fuller explanation regarding credentials is included with our review of section 53430 which follows.

Any claim under this section should be rejected.

Title 5, section 53430.

Claimant notes that section 53430 requires it to engage in a number of activities related to ensuring that individuals meet minimum qualifications for employment. Claimant alleges the obligations of 53430 embrace requirements under section 53406, 53407, 53410, 53410.1, 53412, 53414, 53415, 53416, 53417 and 53420.

AB 1725 partially changed the way academic employees (faculty and educational administrators) were deemed to be eligible for employment with districts. Prior to AB 1725, the Chancellor's Office issued credentials, and the possession of an appropriate credential was required before a person could be hired as a faculty member (including teaching faculty, counselors, librarians, etc.) or an academic administrator. Individuals who were interested in academic service would apply to the Chancellor's Office, and this office would review applicants' education and experience to determine if they were eligible for a credential.

The focus partially shifted with AB 1725. Rather than demonstrating minimum qualifications for academic employment through the possession of a credential, minimum qualifications were to be assessed

by individual districts. In many cases, the qualifications necessary for credentials were reestablished in nearly identical form as minimum qualifications for different types of service. That is, the qualifications that were necessary to secure a counselor's credential might be adopted as the minimum qualifications for service as a counselor. Instead of this office reviewing education and experience and issuing a credential, districts would review education and experience according to state regulations that set minimum qualifications.

Credentials that were issued under the old system remain in effect, such that districts do not need to make minimum qualifications assessments for any persons who hold credentials under the credential system. (Education Code section 87355.)

Additionally, and very importantly, even when it issued credentials, the Chancellor's Office did not assess the qualifications of persons to teach classes for adults (noncredit classes). Those assessments were made by the individual districts, from as early as 1970.

Title 5, section 52600 was filed with the Secretary of State on May 11, 1970. It addressed qualifications for teachers of classes for adults (noncredit classes). Subsection (b) provided:

"The district, which maintains the Community College which will employ the applicant, certifies that the applicant has adequate training and experience to teach the classes for which the applicant is to be employed."

Accordingly, even though the system changed from a system based on credentials to a system based on minimum qualifications, there should be no reimbursement for district assessments of "minimum qualifications" for noncredit faculty because districts have been continually required to assess qualifications for noncredit faculty.

Although the shift from the credentials system to the minimum qualifications system represented new obligations for the districts, those mandates were funded through AB 1725. SEC. 70(b)(2) of AB 1725 described the "phase II" funding that would finance minimum qualifications. It provided that "It is the intent of the Legislature that moneys appropriated through phase II fully fund any state-mandate created pursuant to this section." Funding was provided. Following the first infusion of funds for the activities described in section 70, the funding level was built into the Claimant's base, so Claimant has already been reimbursed for these activities. On that basis, any claim under this section should be rejected.

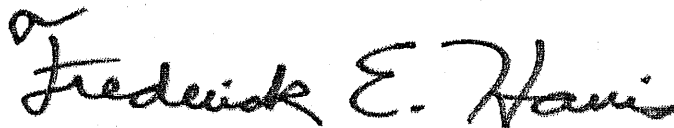
Community college districts had the opportunity in fiscal years 1989-90 and 1990-91 to report costs for:

- Developing articulated programs.
- Applying minimum qualifications to all newly hired faculty and administrators as required by Section 87356.
- Developing and administering a process for waiver of minimum qualifications as required by Section 87359.
- Establishing and applying local hiring criteria as required by Section 87360.
- Establishing and applying local hiring criteria as required by Sections 87743 to 87743.5.
- Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663.
- Establishing and applying new processes for tenure evaluation required by Section 87610.1.

- Establishing and applying the tenure denial grievance procedure required by Section 87610.1.
- Establishing and applying a process for moving administrators into faculty positions as required by Sections 87454 to 87458.
- Publishing and distributing a report on the affirmative action success rate as required by Section 87102.
- Improving instruction by reducing the ratio of full-time equivalent students to full-time equivalent instructors.
- Improving instruction by increasing the hiring of full-time instructors and limiting the practice of hiring part-time instructors.
- Augmenting budgets for college libraries and learning resources.
- Augmenting budgets for plant maintenance and operations.
- Adding new courses or programs to serve community need.
- Making progress towards affirmative action goals and timetables established by the district.
- Developing and maintaining programs and services authorized by Section 78212.5.
- Augmenting budgets for student services in the areas of greatest need.
- Providing for release time for faculty and staff as deemed appropriate by community college district governing boards, to enable faculty and staff participation in implementing reforms. Monies for these items were subsequently built into the base funding for community college districts.

For the reasons stated above, we believe there is no basis for reimbursement and we recommend rejection of the Claim.

Sincerely,



FREDERICK E. HARRIS, Assistant Vice Chancellor
College Finance and Facilities Planning

SixTen and Associates

Mandate Reimbursement Services

EXHIBIT C

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April 16, 2004

Paula Higashi, Executive Director
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COMMISSION ON
STATE MANDATES

Re: Test Claim 02-TC-27
Santa Monica Community College District
Employment of College Faculty and Administrators

Dear Ms. Higashi:

I have received the comments of the Chancellor's Office of the California Community Colleges ("CCC") dated March 11¹, 2004, to which I now respond on behalf of the test claimant.

A. The Comments of CCC are Incompetent and Should be Excluded

Test claimant objects to the comments of CCC, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, test claimant objects to any and all assertions or representations of fact made in the response since CCC has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

¹ Although dated March 11, 2004, these comments were received by e-mail on March 16, 2004, along with comments for 13 other test claims.

"If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

The comments of CCC do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of CCC not be included in the Staff's analysis.

Part I
Arguments Repeated More Than Once

CCC repeats the following comments more than once when responding to individual Education Code sections and Title 5, California Code of Regulations. These replies to those arguments will not be repeated each time when made, but will be deemed included on such occasions by this reference.

B. Legal Compulsion is not Necessarily Required for a Finding of a Mandate

In its comments to requirements of more than one statute or regulation, CCC argues that community college districts are not required to comply and cites *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727² (hereinafter, "*Kern*") and argues that the Supreme Court "found that no mandates exist where a district voluntarily participates in a program." There is no such "finding" in *Kern*!

A finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of legal compulsion *vis-a-vis* non-legal compulsion is still *Sacramento II*.

(1) *Sacramento II* Facts:

² CCC uses an unofficial citation, i.e., 134 Cal.Rptr. 237, without citation to specific page numbers. This response will use official citations and will cite page numbers when appropriate.

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter Sacramento I) the Court of Appeal affirmed, concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).³ (Opinion, at pages 194-199)

In other words, Sacramento I concluded, *inter alia*, that the loss of federal funds and tax

³ Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

credits did not amount to "compulsion."

(3) Sacramento II Litigation

After remand, the case proceeded through the courts again. In Sacramento II, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled. (Opinion, at pages 66-70)

However, the court also overruled that portion of Sacramento I which held that the loss of federal funds and tax credits did not amount to "compulsion." (Opinion, at pages 70-74)

(4) Sacramento II "Compulsion" Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse.

In disapproving Sacramento I, the court explained:

"If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments." (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

"However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving

the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion" to do otherwise.

The Supreme Court in Sacramento II concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

"Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

(5) The "Kern" Case Did Not Change the Standard

In Kern, at page 736, the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

"For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6,⁴ because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining added)

After concluding that the facts in Kern did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

"In sum, the circumstances presented in the case before us do not constitute the type of non-legal compulsion that reasonably could

⁴ This Kern disclaimer that "we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement" refutes CCC's interpretation of Kern that legal compulsion is always necessary for a finding of a mandate.

constitute, in claimants' phrasing, a 'de facto' reimbursable state mandate. Contrary to the situation that we described in (*Sacramento II*), a claimant that elects to discontinue participation in one of the programs here at issue does not face 'certain and severe...penalties' such as 'double...taxation' or other 'draconian' consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations." (*Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented*)

The test for determining the existence of a mandate is whether compliance with the test claim legislation is a matter of true choice, that is, whether participation is truly voluntary. *Hayes v. Commission on State Mandates*, (1992) 11 Cal.App.4th 1564, 1582

The process for such a determination is found in *Sacramento II*, that is, the determination in each case must depend on such factors as the nature and purpose of the program; whether its design suggests an intent to coerce; when district participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (*Kern*, at page 76)

C. The Annual Appropriation Argument Has Been Anticipated

CCC argues that several test claim code sections were added by Chapter 973, Statutes of 1988, that the funding was then built into Claimant's base and, therefore, Claimant has already been reimbursed for these activities.

This argument was anticipated and answered in the test claim, at pages 53-57:

"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), subdivision (b) (2), states: "It is the intent of the Legislature that moneys appropriated during Phase II fully fund any state mandate created pursuant to this section." At subdivision (e): "Based on estimates provided . . . , 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) [for Phase I]."

"The appropriations referenced in the Section 70 intent language are assigned to

specific priorities in Education Code section 84755⁵ (added by Statutes of 1988,

⁵ 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 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).
- (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

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

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

D. Consultations with the Academic Senate

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."

On several occasions, CCC asserts that the section requires the faculty's exclusive representative to consult with the academic senate, not the district, prior to collective bargaining.

This is a matter of first impression to be determined by the Commission at a hearing, not by the interpretation of the CCC. The referenced sections require the faculty's exclusive representative to consult with the academic senate prior to engaging in collective bargaining on certain procedures. The issue of whether or not the costs associated with the activities of the members and staff of the academic senate are, or are not, reimbursable has not yet been determined by the Commission.

Part II
Other Arguments, Not Repeated

E. Education Code Section 70901(b)(1)(B)

(1) The Section Does Apply to Community College Districts

CCC claims that the section does not apply to local districts, only to actions to be taken by the Board of Governors. CCC is wrong. The subdivision provides:

“(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:...” (Emphasis provided)

Therefore, when the Board is taking those actions, it must do so in consultation with community college districts. Consultation is a two way street, districts must participate and will incur costs when doing so.

(2) The Activities of the Section Have Been Expanded Since 1975

CCC argues that section 70901(b)(1)(B) was originally enacted in 1969 as section 200.11 and subsequently became section 70901(b)(1)(B) “without any change in the language.” CCC is wrong.

Former section 200.11 as recodified and renumbered by Chapter Chapter 1010, Statutes of 1976, Section 2, as section 71068 provided:

“The board of governors shall establish minimum standards for the

employment of academic and administrative staff in community colleges.”⁶

As added by Chapter 973, Statutes of 1998, Section 8, 70901⁷ now reads, in part,:

“(a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges...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)...

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

Prior to 1975, the Board of Governors was directed to establish minimum standards for the employment of academic and administrative staff. Since 1975, the legislature has directed the Board to provide its leadership and direction to the maximum degree permissible maintaining and continuing local authority and control. Subdivision (b), for the first time, requires the Board to consult with community college districts. Consultation is a two way street, districts must participate and will incur costs when doing so.

F. Education Code Section 87356

CCC argues that nothing in the section requires any conduct by the community college districts. Test claimant agrees.

⁶ Former Education Code Section 71068 was repealed by Chapter 973, Statutes of 1988, Section 12.9.

⁷ Section 70901 was amended again by Chapter 1023, Statutes of 1998, Section 1, to add a new subdivision (b)(15) which allow contracting for the procurement of goods and services, which is not relevant to this test claim. The chapter also renumbered former subdivision (b)(15) as (b)(16).

Test claimant has not alleged any additional duties are required by the section. The new test claim duties mandated by statute are found in the test claim at pages 42-49. Section 87356 is not mentioned. The section is mentioned in the narrative portion of the test claim for purposes of context at pages 16-17⁸, but no duties are alleged.

G. Education Code Section 87357(a)(1)

Subdivision (a)(1) of Education Code Section 87357 requires the Board of Governors to consult with named representatives and other statewide representatives regarding minimum qualifications of faculty.

CCC contends that the section imposes activity on the Board of Governors, none of which involves community college districts.

In view of the direction of Education Code Section 70901 that 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 and that the board is to consult with community college districts when setting minimum standards for the employment of academic and administrative staff, test claimant contends when the Board is directed in Section 87357(a)(1) to rely primarily on the advice and judgment of, the statewide Academic Senate; and rely primarily on the advice and judgment of, an appropriate statewide organization of administrators and rely primarily on the advice and judgment of, appropriate apprenticeship teaching faculty and labor organization representatives; and in each case, the board of governors shall provide a reasonable opportunity for comment by other statewide representative groups, it cannot be said that the Board will not consult with a wide range of community college districts. When it does so, the costs of those district activities shall be reimbursable.

H. Education Code Section 87357(a)(2)

Subdivision (a)(2) of Education Code Section 87357 requires the Board of Governors to establish a process to review at least every three years the continued appropriateness of the minimum conditions and the adequacy of the means by which they are administered.

CCC argues that this section only applies to the Board of Governors and other groups of which "Claimant is none of these."

⁸ The repeal of the section and its re-enactment is also reported at page 34.

Education Code Section 87357(a)(2) requires the board of governors to establish a process to review the continued appropriateness of the minimum qualifications, and the adequacy of the means by which they are administered. The subdivision goes on to require:

“...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,...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.”

The section clearly requires community college districts to “conduct or otherwise assist” in the review.

In this regard, CCC also asserts “If Claimant is asked to participate, it has the option to decline.” When applying the test for non-legal compulsion, *Sacramento II* has advised:

“...the determination in each case must depend on such factors as the nature and purpose of the...program; whether its design suggests an intent to coerce; when (district) participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (*Sacramento II*, at page 76)

When community college districts are “asked to participate” by the Chancellor or the Board of Governors, the “legal and practical consequences of nonparticipation” must be seriously considered.

I. Education Code Section 87358

Education Code Section 87358 requires the Board of Governors to 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.

CCC suggests that the section does not require Claimant’s participation, but “[A]ny cost associated with the section depends on when and if the Board of Governors requires Claimant to verify its use of minimum qualifications...Claimant would have to cooperate in the review. However, our office has no record that the Board of Governors has ever

conducted a review of Claimant with respect to this issue.” (Emphasis supplied)

This argument is irrelevant for test claim determinations. There is no statutory or regulatory requirement that a test claimant must actually have experienced every element of a test claim.

A test claimant acts in a representative capacity for every school district or community college district in the state. Any one district may experience a test claim activity one year, but may not in the next. In fact, the statute only requires a review “periodically”.

J. Education Code Sections 87359, 87360

The comments of CCC as to these sections do not present any new issues not previously discussed.

K. Education Code Section 87610.1(b) and (d)

(1) Subdivision (b)

Subdivision (b) of Education Code Section 87610.1 provides that certain actions of a community college district shall be classified and procedurally addressed as grievances. And, if there is no contractual grievance procedure resulting in arbitration, the grievance shall proceed to hearing in accordance with Section 87740.

CCC argues that subdivision (b) provides an optional mechanism for addressing the decisions to discontinue the service of probationary faculty, and that the requirement was included in section 87740⁹.

For the first time, subdivision (b) requires that 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. “Shall be addressed as grievances” is not optional.

For the first time, subdivision (b) requires that allegations that the community college district in a decision to reappoint a probationary employee violated, misinterpreted, or

⁹ This reply will not discuss the origins and content of section 87740 at this point, but will reply to the section itself, *infra*.

misapplied any of its policies and procedures concerning the evaluation of probationary employees shall be classified and procedurally addressed as grievances. "Shall be addressed as grievances" is not optional.

Subdivision (b) then concludes "[I]f there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740." "Shall proceed to hearing in accordance with Section 87740" is not optional.

Finally, CCC argues that the decision to come under section 87610.1 is voluntary since districts "choose to collectively bargain a grievance procedure". Test claimant requests the Commission to take notice that it has already determined that collective bargaining is a mandated activity, not an optional activity.

(2) Subdivision (d)

CCC here argues that nothing mandates that Claimant take improper action against an employee, so the State is not responsible for the Claimant's conduct in this regard.

Test claimant agrees. Test claimant has not alleged any additional duties are required by the subdivision. The new test claim duties derived from statute are found in the test claim at pages 42-49. Subdivision (d) of Section 87610.1 is not mentioned. The section is mentioned in the narrative portion of the test claim for purposes of context at pages 24-25, but no duties are alleged.

L. Education Code Section 87611

Education Code Section 87611 provides:

"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."

CCC contends that since Section 1094.5 of the Code of Civil Procedure existed prior to 1975, the requirements of Education Code Section 87611 can not be "new".

As noted above, for the first time, subdivision (b), of Education Code Section 87610.1 requires that 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.

And for the first time, subdivision (b) of Education Code Section 87610.1 requires that 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.

Since these new requirements were mandated after 1975, they are "new" grounds for which a petition for writ of mandate may be granted, and could not have been subject to judicial review prior to 1975.

CCC also argues that section 87611 makes no mention of any costs, it merely indicates that these decisions can be judicially reviewed. Any argument that responding to legal proceedings and judicial hearings does not result in costs is specious.

M. Education Code Section 87663

(1) Subdivisions (c), (d) and (e)

Subdivisions (c) and (d) require that evaluations shall include a peer review process and describes the peer review process.

CCC finds no fault with the mandated activities of subdivisions (c) and (d) with the reservation that subdivision (e) requires that faculty evaluation procedures may be negotiated as part of the collective bargaining process.

Even if there is a collective bargaining agreement, it may, or may not, encompass faculty evaluation procedures. The inclusion of subdivision (e) in the test claim will allow the parameters and guidelines to provide for reimbursement for these faculty evaluation procedures, with the exception of if, or when, they are part of the district's collective bargaining agreement.

(2) The Requirements of Section 87663 Have Been Greatly Expanded Since 1975

Prior to 1975, former section 13481 provided that:

"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.”

Education Code Section 13481, as added by Chapter 1654, Statutes of 1971, Section 4

Former section 13481 was recodified and renumbered as section 87663 by Chapter 1010, Statutes of 1976, Section 2. Section 87663 was amended substantially by Chapter 973, Statutes of 1988, Section 51. As amended, the section read:

“(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 certified teacher¹⁰ 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.

¹⁰ Chapter 1302, Statutes of 1990, Section 114, later substituted “required of a faculty member” for “required of a certificated teacher”.

(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.

(l) 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.

CCC does not mention this major 1988 revision of section 87663 which not only changed the frequency of evaluation for contract employees¹¹ but added all of subdivisions (c) through (l). Instead, CCC diverts our attention to former section 1009¹², which provided:

“The governing board of any school district shall adopt and cause to be printed and made available to each certificated employee of the district reasonable rules and regulations providing for the evaluation of the performance of certificated employees in their assigned duties.”

CCC claims that the existence of this statute proves that “the obligation of districts to provide for the evaluation of faculty and administrators...preceded the January 1, 1975, reimbursement date.” The argument is of no avail, as the requirement to adopt, print and distribute rules and regulations is not the same as the requirements of subdivisions (c) through (l) of section 87663, such as: valuations including a peer review process on a departmental or divisional basis, addressing the forthcoming demographics of California, the principles of affirmative action, student evaluations, and special consideration of probationary teachers.

N. Education Code Section 87714

¹¹ For the purposes of this article "Contract employee" or "probationary employee" means an employee of a district who is employed on the basis of a contract in accordance with Section 87605, subdivision (b) of Section 87608, or subdivision (b) of Section 87608.5. Education Code Section 87661(b)

¹² Former section 1009 was recodified and renumbered as section 72208 by Chapter 1010, Statutes of 1976, Section 2. It was later repealed by Chapter 1372, Statutes of 1990, Section 318.

CCC asserts that section 87714 did not originate in 1981 but was preceded by former section 13566¹³ which, as last amended prior to 1975, stated:

“Each city or district superintendent of schools shall make an annual report of the schools under his jurisdiction to the county superintendent of schools..., which report shall include an affidavit that all employees in positions requiring certification qualifications were properly certified for the work performed.” (Emphasis supplied)

Section 87714, as added by Chapter 470, Statutes of 1981, Section 382.5, and last amended by Chapter 1302, Statutes of 1990, Section 122, requires the chief executive officer of each community college district to provide an affidavit to the board of governors, that all academic employees of the district possessed the required minimum qualifications for the work they performed.

Therefore, section 87714 mandates a new program or higher level of service.
Government Code Section 17514

CCC also cites former section 939 and its 1976 successor section 72413 for its argument that the obligations to verify that employees were qualified for their position existed since 1964. Subdivision (e) of section 939 did require the superintendent of each school district to:

“Determine that each employee of the district in a position requiring certification qualification has a valid certificated document registered as required by law authorizing him to serve in the position to which he is assigned.”

Since the additional activity alleged in the test claim is the section 87713 requirement to provide affidavits to the board of governors, the citation to former section 939 is irrelevant.

O. Education Code Section 87740(c)

Education Code Section 87740 provides for due process hearings when a probationary employee is not reemployed. CCC argues that these due process requirements were

¹³ Former section 13566 was recodified and renumbered as section 87714 by Chapter 1010, Statutes of 1976, Section 2. It was later repealed by Chapter 470, Statutes of 1981, Section 382.

originally added in former Education Code Section 13443 which was added by the statutes of 1965. Former section 13443 was recodified and renumbered as section 87740 by Chapter 1010, Statutes of 1976, Section 2. The differences between the current version of section 87740 is not "how" the proceedings are conducted, but "when" they are conducted.

Both subdivisions (b) of former section 13443 and section 87740 allow an employee to request a hearing to determine if there is "cause" for not reemploying him or her for the ensuing year. Both subdivisions (d) of former sections 13443 and 87740 require the determination not to reemploy a probationary employee to be "for cause."

Where the two sections differ is that section 87740 is now triggered by Education Code Section 87610.1 where, for the first time, subdivision (b) requires:

(1) that 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, and

(2) that 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.

Therefore, section 87740, as triggered by section 87610.1 goes far beyond the pre-1975 requirements that the determination was only to determine if there was "cause." As coupled with section 87610.1, "cause" has been expanded and defined.

P. Education Code Section 87743.2

Section 87743.2 requires the establishment of faculty service areas "not later than July 1, 1990." The test claim alleges that these faculty service areas need to be modified and updated from time to time. CCC argues that there is no "express" updating requirement.

However, the next two sentences of section 87743.2 go on to say:

"The establishment of faculty service areas shall be within the scope of

meeting and negotiating pursuant to Section 3543.2¹⁴ of the Government Code. The exclusive representative shall consult with the academic senate in developing its proposals.”

The section states that the establishment of faculty service areas shall be within the scope of meeting and negotiating during the collective bargaining process. Since collective bargaining agreements are renegotiated from time to time, it would also be necessary for the updating of service areas when the process of collective bargaining requires it. The fact that the reference is made to proposals (in the plural) also implies that this is an ongoing process.

Q. Education Code Section 87743.3 and 87743.4

The comments of CCC as to these sections do not present any new issues not previously discussed.

R. Education Code Section 87743.5

Section 87743.5. requires each community college district to establish competency criteria for faculty members employed by the district not later than July 1, 1990.

CCC contends that nothing in this section refers to updating since the section mandated certain conduct by July 1, 1990.

The section goes on to state, however, that 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. Since collective bargaining agreements are renegotiated from time to time, it would also be necessary to revise competency criteria from time to time to allow for changes made pursuant to the collective bargaining process.

S. Title 5, California Code of Regulations Sections

(1) Title 5, California Code of Regulations Section 53130

CCC asserts that Title 5, California Code of Regulations Section 53130 is not a new program because the mandates contained therein were contained in former pre-1975

¹⁴ Government Code Section 3543.2 is part of the collective bargaining process and covers the scope of representation and requests to meet and negotiate.

Education Code Section 1009. CCC then incorrectly concludes that "the requirements that currently appear in section 53130 have existed without lapse since before January 1, 1975."

Former Education Code Section 1009 was recodified and renumbered as section 72208 by Chapter 1010, Statutes of 1976, Section 2.

Former Education Code Section 72208 was repealed by Section 318 of Chapter 1372, Statutes of 1990. The statute directed that the section "is repealed." It did not say "may be repealed." It did not say "might be repealed" if (a subsequent event occurs). It states the section "is repealed." It was repealed and became inoperative on January 1, 1991.

Section 708 of Chapter 1372, Statutes of 1990, directed the Board of Governors of the California Community Colleges to "initially" adopt and put into effect regulations which incorporate the text of repealed sections. Since an "initial" adoption was anticipated, the section only permitted grammatical or technical changes, renumbering or reordering of sections, removal of outdated terms or references to inapplicable or repealed statutory authorities, and the correction of gender references. This "initial" cut-and-paste operation was ordered to be done "[P]rior to January 1, 1991."

While it is recognized that subdivision (2) of Section 708 contains exculpatory language, the "intent" of the legislature cannot undo the clear language that the section "is repealed."

The Board of Governors did not obey the directive until March 4, 1991 (operative April 3, 1991). Therefore Section 55602.5 of Title 5, California Code of Regulations is a new regulation and is subject to reimbursement. (Government Code Section 17514)

(2) Title 5, California Code of Regulations Section 53403

The first paragraph of Title 5, California Code of Regulations Section 53403 provides that, notwithstanding changes that may be made to minimum qualifications, or to the implementing discipline lists adopted by the Board of Governors, a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualification, if he or she, at the time of initial hire, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

The test claim alleges the following activity:

"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." (Test Claim, page 49, lines 13-16)

CCC argues that the Title 5 section merely permits a district to "grandfather" employees and there is no mandate involved.

While admitting the "grandfathering" provision, CCC does not describe who, how or when this should be done. The test claim merely recognizes the need to establish and implement policies that allow implementation of the "grandfather" provision.

(3) Title 5, California Code of Regulations Section 53430

CCC, in response to Title 5, California Code of Regulations Section 53430, admits that the section requires a new program or higher level of service:

"AB 1725 partially changed the way academic employees...were deemed to be eligible for employment with districts. Prior to AB 1725, the Chancellor's Office issued credentials...Individuals who were interested in academic service would apply to the Chancellor's Office, and this office would review applicant's education and experience to determine if they were eligible for a credential."

"The focus partially shifted with AB 1725...minimum qualifications were to be assessed by individual districts...Instead of this office reviewing education and experience and issuing a credential, districts would review education and experience according to state regulations that set minimum qualifications."¹⁵

CCC then offers amelioration by noting that some individuals are able to be employed under the former system when CCC was doing the evaluations and issuing the credentials (via a "grandfather" clause); and that community college districts have always assessed individuals to teach classes for adults. It even offers an old Title 5 section (52600, which no longer exists) which purportedly¹⁶ dealt with district verification

¹⁵ These state regulations that set the minimum qualifications are activities alleged in the test claim. See test claim, at pages 49-52.

¹⁶ The statement by CCC is unsworn and unverified.

for teachers of classes for adults. These exceptions do nothing to deny a finding that the Title 5 section creates a new program or higher level of service.

When CCC mentions "classes for adults" it parenthetically converts this phrase (without citation of any authority) as being equal to "noncredit classes" and argues that districts are not entitled for reimbursement "because districts have been continually required to assess qualifications for noncredit faculty." This argument has absolutely no merit. It is no more than an unsworn and unverified statement without the citation of any authority.

CERTIFICATION

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

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

Commission on State Mandates

Original List Date: 6/26/2003 Mailing Information: Other
Last Updated:
List Print Date: 10/17/2003 **Mailing List**
Claim Number: 02-TC-27
Issue: Employment of College Faculty and Administrators

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Paula Higashi

From: Skinner, Erik [eskinner@CCCCO.edu]
Sent: Thursday, June 03, 2010 8:59 AM
To: Paula Higashi; Bruckman, Steve; Jeannie Oropeza; Ed.Hanson@dof.ca.gov; Susan Geanacou
Subject: RE: Commission on State Mandates, Pending Test Claim: Employment of Community College Faculty and Administrators (02-TC-27)

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Thank you,

Erik

*Erik Skinner
 Vice Chancellor for Fiscal Policy
 California Community Colleges,
 Chancellor's Office
 1102 Q Street
 Sacramento, CA 95811-6549
 eskinner@cccco.edu
 direct line: 916-323-7007
 fax: 916-323-8245*

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Commission on State Mandates
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To: Kbpsixten@aol.com
Cc: 'jkanemasu@sco.ca.gov'; 'ateng@sco.ca.gov'; jspano@sco.ca.gov; 'doug.brinkley@sccd.edu'; 'paul.steenhausen@lao.ca.gov'; harmeet@calsdrc.com; sandrareynolds_30@msn.com; RobertM@sscal.com; 'dscribner@max8550.com'; 'Joe Rombold'; 'gibrummels@sco.ca.gov'; susan.geanacou@dof.ca.gov; Eric Feller; Camille Shelton; 'steve@shieldscg.com'
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COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



June 3, 2011

Mr. Keith Petersen
SixTen and Associates
P.O. Box 340430
Sacramento, CA 95834-0430

And Interested Parties and Affected State Agencies (see mailing list)

RE: **Draft Staff Analysis, Schedule for Comments, and Hearing Date**
Employment of Community College Faculty and Administrators, 02-TC-27
Education Code Section 70901, et al.
Santa Monica Community College District, Claimant

Dear Mr. Petersen:

The draft staff analysis for the above-named matter is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Friday, **June 24, 2011**. As noted in the analysis, Commission staff concludes that the activities that constitute a new program or higher level of service are already funded through the Board of Governor's base budget appropriations. We seek comments on this finding.

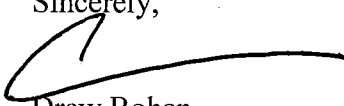
You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at <http://www.csm.ca.gov/dropbox.shtml> for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This matter is set for hearing on **Thursday, July 28, 2011**, at 9:30 a.m., in the State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about July 14, 2011. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Eric Feller at (916) 323-3562 if you have any questions.

Sincerely,


Drew Bohan
Executive Director

Enclosure

ITEM ____
TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 70901, subdivision (b)(1)(B), 87356, 87357, 87358, 87359, 87360, 87610.1, 87611, 87663, 87714, 87740, 87743.2, 87743.3, 87743.4, 87743.5

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Register 90, No. 37 (July 5, 1990), Register 90, No. 49 (Nov. 30, 1990), Register 91, No. 23, Register 91, No. 50 (July 19, 1991), Register 92, No. 9 (Nov. 24, 1991), Register 92, No. 26 (July 27, 1992), Register 92, No. 45 (Nov. 6, 1992), Register 93, No. 25 (June 4, 1993), Register 93, No. 42 (Nov. 4, 1993), Register 93, No. 46 (Oct. 8, 1993), Register 94, No. 38 (Oct. 6, 1994), Register 95, No. 19 (Mar. 19, 1995), Register 96, No. 40 (Oct. 4, 1996)

Employment of Community College Faculty and Administrators
02-TC-27

Santa Monica Community College District, Claimant

EXECUTIVE SUMMARY

Overview

In this test claim, the claimant alleges various activities related to determining the minimum qualifications for academic employees in community colleges, as well as for hiring procedures, evaluating, and providing tenure grievance procedures and faculty service areas for them. Staff finds that the test claim statutes and regulations do not impose a reimbursable state mandate.

Most of the test claim statutes are based on the Community College Reform Act of 1988, (“1988 Reform Act”) which abolished the credential system for community college faculty and administrators, and required the Board of Governors of the California Community Colleges (“board of governors”) to “establish minimum standards ... for the employment of academic and administrative staff in community colleges.” (Ed. Code, § 70901, subd. (b)(1)(B)),¹ Stats. 1988, ch. 973.) Under the 1988 Reform Act, the board of governors is required to adopt regulations that establish the minimum qualifications for community college faculty teaching credit courses, librarians, counselors, and other specified academic employees. (§ 87356.) These regulations

¹ All citations are to the California Education Code between sections 70901 and 87743.5, or to the California Code of Regulations, title 5, between sections 53130 and 53430, et seq., unless otherwise indicated.

were adopted between 1990 and 1994, and many are part of this test claim. (Cal. Code Regs., tit.5, § 53400 et seq.)

The 1988 Reform Act also changed faculty evaluation procedures (§ 87663), such as reducing the evaluation frequency from every two years to every three years for regular (tenured) employees, and requiring temporary employees to be evaluated within the first year of employment, and once every six semesters or nine quarters thereafter.

The 1988 Reform Act also set up a process, in districts where tenure evaluation procedures are collectively bargained and there is a contractual grievance procedure resulting in arbitration, whereby an employee may file a grievance and seek review before an arbitrator for certain allegations. (§ 87610.1, subd. (b), Stats. 1988, ch. 973, Stats. 2000, ch. 124.) Districts without a contractual grievance procedure resulting in arbitration follow the hearing process in section 87740. (§ 87610.1, subd. (b).) Decisions on grievances and arbitrator hearings under the test claim statute are subject to judicial review. (§ 87611.)

Faculty Service Areas (“FSAs”), also added by the 1988 Reform Act, are “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.” (§ 87743.1.) Each faculty member is required to qualify for one or more FSAs at the time of initial employment, and if qualified, may apply for more FSAs. Any disputes due to denial of FSA applications are treated as grievances. (§ 87743.3.) Districts are required to maintain records of faculty members’ FSAs in the faculty members’ personnel files. (§ 87743.4.)

Procedural History

The test claim was filed by the Santa Monica Community College District on June 13, 2002. The Chancellor’s Office submitted comments on March 11, 2004, to which the claimant filed rebuttal comments on April 26, 2004. The Department of Finance did not file comments. Claimant filed a history of the title 5 regulations in the test claim on November 26, 2007, and a list of registers of the title 5 regulations in the test claim on June 4, 2008. On April 19, 2010, Commission staff requested information from state agencies regarding funding for the test claim legislation, to which the Chancellor’s Office responded on June 2, 2010.

Positions of Parties and Interested Parties

Claimant’s position

Claimant Santa Monica Community College District asserts that the test claim statutes and regulations constitute a reimbursable state mandate. Claimant also argues that although funding for the test claim statutes was provided after the 1988 Reform Act (§ 84755) it did not meet the test of Government Code section 17556, subdivision (e), because it did not provide for offsetting savings that result in no net costs to the school district or include additional revenue that was specifically intended to provide funding in an amount sufficient to fund the cost of the state mandate.

California Community Colleges Chancellor’s Office

The Chancellor’s Office asserts that none of the activities in the statutes or regulations claimed constitute reimbursable mandates because they either do not mandate a program on a community

college district, or do not constitute a new program or higher level of service, or do not impose “costs mandated by the state” because the activities are already funded.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local governments and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments or school districts to be eligible for reimbursement, one or more similarly situated local governments or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

Claims

The following chart provides a brief summary of the claims and issues raised by the claimant, and staff’s recommendation.

Claim	Description	Issues	Recommendation
Establish minimum standards for employment.	Requires the board of governors to establish and implement minimum standards for employment.	The Chancellor’s Office states this only applies to the Board of Governors. Claimant argues it must be involved in consultation.	<u>Denied</u> : This provision is a state mandate only on the board of governors, a state agency.
Adopt regulations to establish minimum qualifications and discipline lists.	Requires the board of governors, in establishing the minimum qualifications for faculty, to consult with the academic senate.	The Chancellor’s Office states that there is no requirement for teachers to consult with the board of governors. Claimant argues that any consultation should be reimbursable.	<u>Denied</u> : This provision only mandates action by the board of governors.
Review community college districts’ application of minimum	Requires the board of governors to periodically designate a faculty team to review each district’s application of	Claimant argues it must participate in the board of governors’ review process.	<u>Denied</u> : The board of governors does not mandate district participation.

qualifications.	minimum qualifications.		
Determine the minimum qualifications of applicants for faculty and administrator positions.	Requires community college to determine qualifications equivalent to the minimum qualifications.	The Chancellor's Office asserts that this activity has been reimbursed.	<u>Denied</u> : This provision does not impose costs mandated by the state.
Development of the process, hiring criteria, and standards for faculty determinations and hiring.	Requires the district to jointly develop with the academic senate and agree on a process for reaching faculty determinations.	Claimant argues it must develop and agree upon the process by which the governing board reaches its determinations regarding faculty"	<u>Denied</u> : This provision does not impose costs mandated by the state.
Develop hiring criteria	In establishing the hiring criteria for faculty and administrators, no later than July 1, 1990, districts develop criteria.	Claimant pled: Complying with the criteria established by the governing board when hiring faculty and administrators.	<u>Denied</u> : This was to be performed by July 1, 1990, so no costs have been incurred during the reimbursement period. Also, this activity has been funded.
Providing an affidavit that academic employees of the district possessed the minimum qualifications.	Requires the district to provide an affidavit that during the 12 preceding months all academic employees possessed the required minimum qualifications.	The Chancellor's Office states that this has been required as early as 1959. Claimant argues that the 1959 statute requires the report to the county superintendent of schools rather than the board of governors.	<u>Denied</u> : This is not a new program or higher level of service.
Authority to continue to employ credentialed academic employees qualified at time of initial hire.	Authorizes the governing board to continue to employ people subject to minimum qualifications, as specified.	Claimant asserts the need to establish and implement policies that allow implementing the grandfathering provision.	<u>Denied</u> : The statute does not require districts to retain employees who were hired before the establishment of the minimum qualifications.

Faculty Evaluations.	The faculty evaluation statute was amended by the test claim statute and a regulation was adopted to require printing and making available to each academic employee.	Claimant argues for reimbursement for faculty evaluation procedures.	<u>Denied:</u> This provision does not impose costs mandated by the state.
Tenure Grievance Arbitration Procedure.	Provides an alternative grievance process for faculty to challenge district's decision not to grant tenure or reappoint	The Chancellor's Office states that this is an optional mechanism. Claimant asserts that new allegations must be addressed as grievances.	<u>Denied:</u> This provision is not a state-mandated new program or higher level of service.
Notice and Hearing Procedure.	Requires notice and hearing procedures before an employee is given notice that his or her services will not be required for the ensuing year.	The Chancellor's Office argues that this activity has been required since 1965. Claimant argues that this is now required for employees who use the new tenure grievance procedure.	<u>Denied:</u> This provision is not a state-mandated new program or higher level of service.
Faculty Service Areas.	Requires faculty service areas (FSAs) to be established, as specified.	Claimant pled various activities such as establishing and updating FSAs.	<u>Denied:</u> This provision does not impose costs mandated by the state.

Staff Analysis

Establishing minimum standards for employment: The board of governors, in consultation with community college districts and interested parties, are required to "establish minimum standards as required by law, including . . . Minimum standards for the employment of academic and administrative staff in community colleges."

Claimant asserts that community colleges are required to consult with the board of governors, but the Chancellor's Office disagrees.

Staff finds that section 70901, subdivision (b)(1), does not impose a state-mandated activity on community college districts because the statute merely affords districts the opportunity to consult with the board of governors, but does not mandate it.

Adopt regulations to establish minimum qualifications and discipline lists: The board of governors is required to adopt regulations to establish and maintain the minimum qualifications

for various types of faculty service (§ 87356) and is required to consult with and rely primarily on the advice and judgment of the statewide academic senate for the minimum qualifications for faculty. The board is also required to consult with other statewide groups, as specified, regarding the minimum qualifications of educational administrators and apprenticeship instructors, and establish a process to review at least every three years the continued appropriateness of the minimum qualifications. (§ 87357.) The board is also required to develop a list of disciplines that are related to each other, consulting the organizations specified in statute. (§ 87357, subd. (b).)

Claimant requests reimbursement to consult with and advise the board of governors regarding the minimum qualifications for faculty and administrators, and to conduct and to otherwise assist in the review of the continued appropriateness of the minimum qualifications for the employment of faculty and administrators.

The Chancellor's Office states that community college districts are not required to perform these activities. Any claimant asked to participate has the option to decline.

Staff finds that sections 87356 and 87357 do not impose state mandates on community college districts because there is no legal or practical compulsion to consult with the board of governors or participate in the review process.

Review of community college districts application of minimum qualifications: The board of governors is required to "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." (§ 87358.)

Claimant requests reimbursement to participate in the review of each district's application of the minimum qualifications to faculty and administrators. The Chancellor's Office argues that this is not required.

Staff finds section 87358 is not a state mandate because that the plain language of the statute requires the board of governors to "designate" a team of community college faculty, but does not mandate district participation.

Determining the minimum qualifications of applicants for faculty and administrators: Section 87359, subdivision (a), and section 53430, subdivision (a), of the regulations provide that no one may be hired to serve as a community college faculty or educational administrator unless the governing board of the community college district determines that the applicant possesses qualifications that are at least equivalent to the minimum qualifications required pursuant to section 87356 and the implementing title 5 regulations. Sections 53410 through 53420 of the title 5 regulations lay out the minimum qualifications for these positions, and generally specify the educational degrees, professional licenses and certificates, and work experience required for each position.

The claimant requests reimbursement to determine whether applicants for college faculty or educational administrators have qualifications that are at least equivalent to the minimum conditions specified.

The Chancellor's Office states that, "the shift from the credentials system to the minimum qualifications system represented new obligations for districts ..." but also asserts that claimant has already been reimbursed for the activities.

Staff finds that section 87359, subdivision (a), and section 53430, subdivision (a), of the title 5 regulations require community college districts to determine that an applicant for a faculty or educational administrator position possesses qualifications that are at least equivalent to the minimum qualifications identified in sections 53406 (accredited degrees and units), 53407 (discipline lists), 53410 (instructors of credit courses, counselors and librarians), 53410.1 (professional licenses as alternative qualification), 53412 (minimum qualifications for instructors of noncredit courses), 53415 (minimum qualifications for learning assistance or learning skills coordinators or instructors and tutoring coordinators), 53416 (minimum qualifications for work experience instructors or coordinators), 53417 (licensed or certificated occupations), and 53420 (minimum qualifications for educational administrators), as applicable. Staff further finds that the criteria used in making the employment determination is required to be reflected in the district's action to employ. In the context of the entire statutory and regulatory scheme, community college districts have an affirmative duty to determine the minimum qualifications of an applicant for these positions. Staff also finds, however, that section 87359, subdivision (a), and 53430, subdivision (a), do not impose costs mandated by the state because they are already funded pursuant to section 84755, subdivision (d).

Staff further finds that determining that an applicant meets the minimum qualifications for a faculty or administrator position in the Disabled Students Programs and Services (DSPS, Cal. Code Regs., tit. 5 § 53414) and in the Extended Opportunity Programs and Services (EOPS), and reflecting the criteria used in the action to employ an applicant for positions in these programs are not mandated by the state, because both the DSPS and EOPS programs are voluntary.

Staff further finds that determining the minimum qualifications for instructors of noncredit courses (Cal. Code Regs., tit. 5 § 53412) is not a new program or higher level of service because the districts provided certification to these instructors before the test claim statutes and regulations, and determining their minimum qualifications is not a higher level of service than providing certification.

Development of the Process, Hiring Criteria, and Standards for Employment: Section 87360, subdivision (a), requires that in establishing the 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.

Sections 87359, subdivision (b), and 53430, subdivisions (b) and (c), of the title 5 regulations impose specified requirements for developing the hiring criteria, process and standards for the employment of faculty.

Sections 87359, subdivision (c) and 53430, subdivision (d), provides that "[u]ntil a joint agreement is reached and approved pursuant to Subdivision (b), the district process in existence on January 1, 1989, shall remain in effect." In the title 5 regulation, this was changed to: "[u]ntil 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."

Staff finds that sections 87359, subdivision (b), and 53430, subdivisions (b) and (c) of the title 5 regulations are state mandates for the following activities:

- The process, criteria, standards, and policies and procedures for reaching determinations regarding the employment of faculty whose qualifications are equivalent to the minimum qualifications shall be developed and agreed upon jointly by representatives of the governing board and the academic senate. (§ 87359, subd. (b), Cal. Code Regs, tit. 5, § 53430, subd. (b).)
- The agreed upon process for hiring faculty 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 possess qualifications that are at least equivalent to the applicable minimum qualifications specified in the regulations. (§ 87359, subd. (b), Cal. Code Regs, tit. 5, § 53430, subd. (b).)
- The process for hiring faculty 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 section 87358. (§ 87359, subd. (b), Cal. Code Regs, tit. 5, § 53430, subd. (c).)
- The governing board shall approve the process, criteria, standards, and policies and procedures for reaching determinations regarding the employment of faculty and administrators. (§ 87359, subd. (b), Cal. Code Regs, tit. 5, § 53430, subd. (b).)

Community college districts are *not* entitled to reimbursement for these activities when employing faculty in the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), and Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.) because those programs are voluntary.

Staff also finds, however, that section 87359, subdivision (b), and 53430, subdivisions (b) and (c), do not impose costs mandated by the state because they are already funded pursuant to section 84755, subdivision (d).

Develop hiring criteria: Staff also finds that the following section 87360 provisions are not reimbursable because they were required to be completed by July 1, 1990, and the reimbursement period for this test claim begins in the 2001-2002 fiscal year (because the test claim was filed on June 13, 2003).² Thus, claimants could not have incurred costs mandated by the state during the period of reimbursement for the following:

- Develop the hiring criteria for faculty and administrators and faculty that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (§ 87360, subd. (a).)

² Government Code section 17557, subdivision (e).

- Develop hiring criteria, policies, and procedures for new faculty members that are developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board. (§ 87360, subd. (b).)

Moreover, these are one-time activities for which the board of governors certified, at its September 1989 meeting, that adequate funding has been provided, so there are no costs mandated by the state.

Providing an affidavit that the academic employees of the district possess the minimum qualifications for the work they performed in the preceding 12 months: Section 87714 requires districts, “at times as required by the board of governors,” to 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.”

Claimant requests reimbursement for “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.”

The Chancellor’s Office states that this activity was required before the test claim statute.

Staff finds that section 87714 (Stats. 1981, ch. 470) is not a new program or higher level of service because former section 87714 (Stats. 1976, ch. 1010) also required providing an affidavit.

Authority to continue to employ credential academic employees qualified at the time of initial hire: Section 53403 authorizes the community college district to “continue to employ a person to teach in a discipline or render a service subject to the 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.”

Claimant seeks reimbursement for establishing and implementing policies to recognize faculty who were qualified to teach in their respective disciplines under the minimum qualifications when they were employed.

The Chancellor’s Office asserts that this provision merely permits districts to “grandparent” employees in under the minimum qualifications in effect when the employees were hired, but does not mandate a district activity.

Staff finds that section 53403 of the title 5 regulations is not a state-mandated new program or higher level of service. The section’s plain language authorizes but does not require community college districts to retain employees who were hired before the establishment of the minimum qualifications, and deems those employees to possess the minimum qualifications, until the expiration of their credentials. It does not require the community college district to assess the qualifications of employees at the time the regulation was adopted.

Faculty evaluations: The claimant pled section 87663 as amended by Statutes 1988, chapter 973 and Statutes 1990, chapter 1302, which amended subdivisions (a) and (b). The 1988 amendment added subdivision (c) through (i) to section 87663.

In addition, section 53130 of the title 5 regulations requires that “[t]he 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.”

Claimant seeks reimbursement for conducting evaluations using a peer review process, conducting evaluations pursuant to the terms of a collective bargaining agreement, consulting with the faculty’s exclusive representative before engaging in collective bargaining regarding the evaluation procedures, evaluating faculty using student evaluations, 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, evaluating administrators pursuant to evaluation procedures established by the governing board and, to the extent possible, to include faculty evaluation, and pursuant to section 53130 of the title 5 regulations, 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.

The Chancellor’s Office asserts various reasons why these activities are not reimbursable.

Because they are state-mandated and not required under prior law, staff finds that the following are a state-mandated new program or higher level of service:

- Evaluate a temporary employee within the first year of employment, and at least once every six regular semester or once every nine regular quarters thereafter (§ 87663, subd. (a).);
- Include a peer review process, and for that the peer review process to be on a departmental or divisional basis, and address the forthcoming demographics of California and the principles of affirmative action, and for the process to 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 (§ 87663, subds. (c) & (d).);
- Develop “evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative” for probationary faculty (§ 87663, subd. (h).);
- Establish and disseminate written evaluation procedures for administrators (§ 87663, subd. (i).); and
- Adopt and cause to be printed and made available to each academic employee of the district amended rules and regulations that reflect the new requirements imposed by Education Code section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) and provide for the evaluation of the performance of academic employees in their assigned duties. This is a one-time activity. (Cal. Code Regs., tit. 5, § 53150.)

Staff also finds, however, that sections 87663 and 53150 of the title 5 regulations do not impose costs mandated by the state because they are already funded pursuant to section 84755, subdivision (d).

Tenure grievance arbitration procedure: Section 87610.1 provides an alternative grievance process for a probationary or contract faculty employee to challenge a district's decision not to reappoint and grant tenure to the employee.

A probationary employee's challenges to a district's decision to deny tenure or not reappoint the employee are classified and procedurally addressed as grievances. In districts where no collective bargaining agreement is in place, however, or if the agreement fails to provide for arbitration of grievances, the employee's allegations challenging the district's decision to deny tenure or reappointment proceed to hearing in accordance with section 87740. The right to a hearing under section 87740 has existed since at least 1971.

If the grievance reaches arbitration, the arbitrator has limited authority to grant a remedy. The arbitrator cannot grant tenure, but may order certain "appropriate make-whole remed[ies]," such as back pay, benefits, and reinstatement in a probationary position. The arbitrator may also order the district to reconsider its original decision.

Because this procedure for dismissing probationary faculty only applies to districts where tenure evaluation procedures are collectively bargained, and the collective bargaining agreements must be entered into voluntarily, the tenure grievance process in section 87601.1 is not a state mandate. It is merely an alternative to the preexisting hearing procedure in section 87740.

Complying with the arbitrator's remedies is also not a mandate because the remedies would come from the arbitrator rather than the state. Moreover, the community college chose to be subject to the arbitrator under the section 87610.1 process.

Section 87611 states that a "final decision reached following a grievance or hearing conducted pursuant to subdivision (b) of Section 87610.1" regarding tenure is subject to judicial review "pursuant to Section 1094.5 of the Code of Civil Procedure." This provision recognizes the ability to challenge final decisions on grievances or tenure hearings, but does not require anything of community college districts. Districts are neither required to petition the court, nor to respond to a petitioner. This provision is also not a new program or higher level of service because judicial review was authorized under prior law.

Notice and hearing procedure: Section 87740 describes notice and hearing procedures for community college districts "before an employee is given notice that his or her services will not be required for the ensuing year." Claimant asserts that a section 87740 hearing is now triggered by section 87610.1, subdivision (b), the tenure grievance procedure discussed above. Because a section 87740 hearing could be triggered by section 87610.1 (Stats. 1988, ch. 973) prior to Statutes 1995, chapter 758, which is the only version of section 87740 pled by claimant, and because Statutes 1998, chapter 758 made only technical, nonsubstantive changes to section 87740, staff finds that section 87740 (Stats. 1988, ch. 973) is not a new program or higher level of service.

Faculty Service Areas: Community college districts were required to establish "faculty service areas" by July 1, 1990 (§ 87743.2). A faculty service area (FSA) is "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." (§ 87743.1.)

Establishing FSAs is within the scope of negotiation under the Educational Employment Relations Act (EERA), and the exclusive representative is required to consult with the academic senate in doing so (§ 87743.2). Districts were also required to establish competency criteria for faculty members in order to determine competency to serve in an FSA by July 1, 1990, with the development, meeting, and negotiating to take place according to the EERA. (§ 87743.5.)

Although sections 87743.2 and 87743.5 (Stats. 1988, ch. 973) are a state-mandated new program or higher level of service, they are not reimbursable because they were to be completed by July 1, 1990, and the reimbursement period for this test claim is available starting in the 2001-2002 fiscal year (because the test claim was filed on June 13, 2003),³ so there is no evidence that the claimant incurred costs for these activities during the period of reimbursement. Moreover, these are one-time activities for which the board of governors certified, at its September 1989 meeting, that adequate funding has been provided, so there are no costs mandated by the state.

Under section 87743.3, each faculty member is required to qualify for one or more FSAs at the time of initial employment, and may apply for more FSAs if he or she is qualified. Section 87743.3 also requires districts to procedurally address as a grievance, or to use fair and equitable procedures for resolution of, any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area.

Districts are also required to maintain a permanent record for each faculty member employed by the district, in his or her personnel file, 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. (§ 87743.4.)

Staff finds that sections 87743.3 and 87743.4 do not impose costs mandated by the state because they are already funded pursuant to section 84755, subdivision (d).

Conclusion & Recommendation

Staff finds that the test claim statutes and regulations do not impose a reimbursable state mandate on community college districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code sections 17514 or 17556..

Staff recommends that the Commission adopt this analysis to deny the test claim.

³ Government Code section 17557, subdivision (e).

STAFF ANALYSIS

Claimant

Santa Monica Community College District

Chronology

06/13/02 Claimant files test claim 02-TC-27

07/25/03 Department of Finance requests extension of time to file comments

08/21/03 California Community Colleges Chancellor's Office ("Chancellor's Office") requests extension of time to file comments

09/18/03 Department of Finance requests extension of time to file comments

10/10/03 Chancellor's Office requests extension of time to file comments

10/31/03 Department of Finance requests extension of time to file comments

02/13/04 Department of Finance requests extension of time to file comments

03/11/04 California Community Colleges Chancellor's Office submits comments

04/26/04 Claimant files rebuttal comments to the Chancellor's Office comments

06/10/04 Department of Finance requests extension of time to file comments

09/9/04 Department of Finance requests extension of time to file comments

12/24/04 Department of Finance requests extension of time to file comments

03/15/05 Department of Finance requests extension of time to file comments

09/21/05 Department of Finance requests extension of time to file comments

02/3/06 Department of Finance requests extension of time to file comments

11/26/07 Claimant files a supplement (a history of the title 5 regulations) to the test claim

06/04/08 Claimant files a supplement (list of registers of title 5 regulations) to the test claim

04/19/10 Commission staff requests information from state agencies regarding funding for the test claim legislation

06/03/10 Chancellor's Office responds to information request

I. BACKGROUND

The Community College Reform Act of 1988 (Stats. 1988, ch. 973, "Reform Act"), which provides the basis for most of this test claim, was based largely on a study by the Commission for the Review of the Master Plan for Higher Education ("Review Commission") entitled "The Challenge of Change: A Reassessment of the California Community Colleges" ("Reassessment Report"). In its authorization of the Reassessment Report (Stats. 1984, ch. 1506) the Legislature stated:

(a) The Legislature finds and declares that the community colleges are a large and important segment of California's system of public higher education. In the last 20 years, [1964-1984] community colleges have not only experienced tremendous growth in the numbers of students enrolled, but have undergone a major transition in the types of students served and the types of programs and courses offered. Community colleges have also experienced an unacceptable degree of uncertainty and instability in their revenues over the last decade.

(b) The Legislature further finds and declares that legislative actions regarding community colleges have not been based on a comprehensive policy on the role that community colleges should play in public education. Community colleges have been reacting and responding to narrow changes in state policy that have shaped the functions of the colleges by default, rather than by design.

(c) It is, therefore, the intent of the Legislature to require the Commission for the Review of the Master Plan for Higher Education established pursuant to Senate Bill 1570 of the 1983-84 Regular Session to set the reassessment of the mission of the community colleges as its first and highest priority.

The Reassessment Report was submitted to the Joint Legislative Committee for the Review of the Master Plan for Higher Education in March 1986 and recommended many of the changes enacted in the 1988 Reform Act.

Minimum Qualifications for the Employment of Faculty and Educational Administrators

Before the 1988 Reform Act, the Chancellor's Office issued credentials to prospective faculty (including counselors and librarians) and administrators at community colleges. Interested individuals would apply to the Chancellor's Office, which would review the applicants' education and experience to determine if they were eligible for a credential. (Former Cal.Code Regs., tit. 5, § 52030 et seq., Register 83, No. 29 (July 16, 1983) p. 628.15.)

The Review Commission's 1986 Reassessment Report recommended that the community college credential system be abolished, and that community college faculty be subject to peer review, as follows:

The Community Colleges must recruit and retain faculty and administrators with the highest professional qualifications. To this end, the Board of Governors must establish qualifications appropriate to postsecondary institutions and make certain that both full-time and part-time faculty appointments are subject to peer review, as they are in other collegiate institutions.

California is the only state to retain a system of credentialing for community college faculty and administrators originally developed for the elementary and secondary schools. Under this system, new faculty are to obtain a credential in one or more of sixty-six subject matter areas based on a *pro forma* paper review. There is no requirement that proposed new faculty appointments be reviewed by tenured faculty in the appropriate department or division of each college. This system is unnecessarily rigid, cumbersome, and unsuited to the academic rigor of postsecondary institutions.

The Commission recommends:

34. That the Legislature delete from the *Education Code* existing credential requirements for Community College faculty and administrators.

35. That the Legislature authorize the Board of Governors, in consultation with the faculty, to (a) establish qualifications for employment of faculty and administrators, and (b) require that new faculty appointments, both full-time and part-time, be subject to peer review in addition to other administrative procedures.⁴ (Emphasis in original.)

Consequently, the 1988 Reform Act stated that one of the duties of the Board of Governors of the California Community Colleges (“board of governors” or “Chancellor’s Office”), a state agency, is to “establish minimum standards ... for the employment of academic and administrative staff in community colleges.” (§ 70901, subd. (b)(1)(B), Stats. 1988, ch. 973.) Similarly, the Reform Act imposed a duty on community college districts to: “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.” (§ 70902, subd. (b)(4), Stats. 1988, ch. 973.)⁵ Regarding these minimum standards or qualifications, the 1988 Reform Act declared the following legislative intent:

(q)(1) In general, the appropriate focus of minimum qualifications is in helping the colleges to ensure that they will select faculty who are competent in subject matter and possess the basic academic preparation needed to work effectively at the college level. The minimum qualifications for all faculty should be the same except where the application of qualifications without differentiation would be clearly unreasonable or impractical.

(2) The minimum qualifications for administrators should help the colleges to ensure that they will select individuals who are competent to perform the kind of administrative responsibilities that administrators are normally required to assume, such as supervision, organizational planning, and budget development and administration, and who understand the needs of faculty and the learning process. [¶]...[¶]

(s) [¶]...[¶] (4)...[C]olleges may establish criteria for hiring that go well beyond the minimum qualifications set by regulation. The establishment of additional criteria of this sort should be expected and encouraged. (Stats. 1988, ch. 973, § 4.)

⁴ Commission for the Review of the Master Plan for Higher Education. “The Challenge of Change: A Reassessment of the California Community Colleges.” March 1986, pages 13-16. See: <http://sunsite.berkeley.edu/uchistory/archives_exhibits/masterplan/post1960.html> as of June 1, 2011.

⁵ Claimant did not plead section 70902 in this test claim, so staff makes no findings on it.

The 1988 Reform Act requires the board of governors to adopt regulations that establish the minimum qualifications for community college faculty teaching credit courses, extended opportunity programs and services workers, handicapped student programs and service workers, and instructional or student services administrators. (§ 87356.) These regulations were adopted between 1990 and 1994, many of which are part of this test claim. (Cal. Code Regs., tit.5, § 53400 et seq.) The regulations require all degrees and units used to satisfy the minimum qualifications to be from accredited institutions, as defined. (Cal. Code Regs., tit. 5, § 53406.) The statute requiring adoption of regulations on minimum qualifications (§ 87356, Stats 1993, ch. 506) was reenacted in 1993 to require the adoption of regulations for specified faculty member and administrator positions.

The 1988 Reform Act also requires the board of governors to “adopt regulations setting forth a process authorizing local governing boards to employ faculty who do not meet the applicable minimum qualifications specified in the regulations . . .” but requires that a new hire have qualifications that are equivalent to the minimum qualifications in the regulations. (§ 87359.) The statute also requires that the governing boards follow a process in developing the process, criteria, and standards by which a district’s governing board “reaches its determinations regarding faculty.” (*Ibid.*) The title 5 regulation (§ 53430) that implements section 87359 was adopted in 1990. Thus, each district may adopt its own minimum qualifications that are equivalent to the minimum qualifications in the regulations.

Faculty Evaluations

Community colleges have been required to evaluate employees at least since 1971. (Stats. 1971, ch. 1653.) The 1988 Reform Act (§ 87663) made changes that: (1) reduced the evaluation frequency from every two years to every three years for regular (tenured) employees; (2) required temporary employees to be evaluated within the first year of employment, and once every six semesters or nine quarters thereafter; (3) required evaluations to include a peer review process, as specified; (4) required consultation between the faculty’s “exclusive representative”⁶ and the academic senate where evaluation procedures are negotiated as part of the collective bargaining process; (5) expressed legislative intent that faculty evaluation procedures include student evaluations to the extent practicable; (6) where the faculty has elected an exclusive representative, accorded probationary faculty the right to be evaluated under clear, fair and equitable evaluation procedures locally defined through collective bargaining, not to include de facto tenure rights; and (7) required governing boards to establish and disseminate written evaluation procedures for administrators that include, to the extent possible, faculty evaluation.

Tenure Grievance Arbitration

Before the 1988 Reform Act, if the district chose to keep the employee in a probationary or contract status for the second year, at the end of that year the district had only two choices: to grant permanent status or not to grant such status and terminate the teacher's employment. (§87609; *McGuire v. Governing Board* (1984) 161 Cal.App.3d 871, 874.) Termination

⁶ “Exclusive representative” means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer. (Gov. Code, § 3540.1, subd. (e).)

procedures were and are governed by section 87740 hearings (originally enacted by Stats. 1976, ch. 1010) as to whether “cause” existed for the termination.

In the 1988 Reform Act, the Legislature stated the following regarding tenure reform: “The current tenure system lacks adequate participation by faculty, provides an inadequate probationary period for the evaluation of permanent faculty, and does not provide uniform systemwide procedures for due process and grievance. (Stats. 1988, ch. 973, § 4, subs. (l) & (m).)

Thus, under the test claim statute (§ 87610.1, Stats. 1988, ch. 973, Stats. 2000, ch. 124), in districts where tenure evaluation procedures are collectively bargained, and there is a contractual grievance procedure resulting in arbitration, the employee may file a grievance and seek review before an arbitrator for the following allegations:

- That the district, in a decision to grant tenure, made a negative decision that to a reasonable person was unreasonable;
- That the district violated, misinterpreted, or misapplied, any of its policies and procedures concerning the evaluation of probationary employees; and
- That the 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. (§ 87610.1, subd. (b).)

Districts without a contractual grievance procedure resulting in arbitration follow the hearing process in section 87740. (§ 87610.1, subd. (b).)

This statute also outlines grievance procedures (§ 87610.1, subd. (c)) and the authority of the arbitrator. (§ 87610.1, subd. (d).) Decisions on grievances and arbitrator hearings under the test claim statute are subject to judicial review. (§ 87611.)

Faculty Service Areas

A Faculty Service Area (“FSA”), also added by the 1988 Reform Act, is “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.” (§ 87743.1.) Each faculty member is required to qualify for one or more FSAs at the time of initial employment, and if qualified, may apply for more FSAs. Any disputes due to denial of FSA applications are treated as grievances (§ 87743.3.) Districts are required to maintain records of faculty members’ FSAs in the faculty members’ personnel files. (§ 87743.4.) Each community college district is required to establish criteria to determine competency to serve in the FSA by July 1, 1990. (§ 87443.5.) According to a “Frequently Asked Questions” document on the academic senate’s website:

Faculty Service Areas are established by each district and serve as the basis for making decisions in the event of a layoff or reduction in force (RIF). Some districts construct their FSAs by designating each discipline listed in the Disciplines List as an FSA. Other districts combine several disciplines into an FSA. And other districts combine all disciplines into one single FSA. Upon hire, a faculty member is placed in the FSA that includes the discipline for their position. If your FSA includes more than one discipline, it does not mean that

you are qualified for service in each of the disciplines listed in that FSA, but only for those in which you meet the MQs [minimum qualifications].⁷

State Funding

The Legislature established a “trigger provision” in section 70 of the 1988 Reform Act, stating intent that the Act be implemented in two phases of “transitional program improvement”⁸ until program-based funding was implemented in fiscal year 1991-1992.⁹

Phase I of transitional program improvement included the statutes regarding minimum qualifications (§§ 87356, 87357, 87358, 87359) and hiring criteria (§87360), as well as employee evaluations (§ 87663), and FSAs (§§ 87743.2-87743.5). The Reform Act requires the hiring criteria (§ 87360) and FSAs (§ 87743.2 & 87743.5) be implemented by July 1, 1990, and a list of disciplines was to be established by the board of governors by July 1, 1989. (§ 87357, subd. (b).) The Legislature stated intent “that moneys appropriated during Phase I fully fund any state-mandates created pursuant to this section.”¹⁰

Phase II consisted of tenure reform and program-based funding, including the tenure grievance arbitration procedures (§§ 87610.1 & 87611) in this claim. The Legislature stated its intent “that moneys appropriated during Phase II fully fund any state-mandate created pursuant to this section.”¹¹

The 1988 Reform Act made its state-mandated provisions conditional on certification of adequate funding by the Board of Governors of the California Community Colleges. Section 70, subdivision (d), of the Reform Act states that certain Education Code sections are conditional on state certification of adequate funding for Phase I and Phase II transitional program improvement. The Phase I certification requirement is as follows:

[Sections of the Reform Act that include the Phase I test claim statutes] shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase I of transitional program improvement and for any applicable state mandates, as authorized by Section 84755 of the Education Code.

The board of governors provided certification of adequate funding for Phase I in September 1989.¹² The Phase II adequate funding certification was provided in November 1990.¹³

⁷ Academic Senate for California Community Colleges, FAQs on Minimum Qualifications, p. 4.

⁸ Statutes 1988, chapter 973, section 70, subdivision (b).

⁹ Education Code Section 84755, subdivision (a).

¹⁰ Statutes 1988, chapter 973, section 70, subdivision (b)(1).

¹¹ Statutes 1988, chapter 973, section 70, subdivision (b)(2).

¹² Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.

The 1988 Reform Act also contained the following legislative declarations:

The Legislature finds and declares that the reforms enacted through this act form a mutually dependent and related set of provisions. While some few provisions could be enacted independently, other sections of this act depend upon adequate support for the programs of the community colleges. There is a direct linkage between those sections of this act which constitute the further professionalization of the faculty and the moneys required to enhance the programs of the community colleges for "transitional program improvement," as specified in Section 84755 of the Education Code.

For instance, the elimination of credentials must be accompanied by the establishment of minimum qualifications by the board of governors. Minimum qualifications in turn must be implemented by districts through the establishment of faculty service areas, competency criteria, and various waiver processes. The extension of the tenure probationary period to four years as well as the revisions to layoff procedures also depend upon faculty service areas and competency criteria. Similarly, because so many of the reforms call for faculty involvement in the determination and implementation of policy, and because the quality, quantity, and composition of full-time faculty have the most immediate and direct impact on the quality of instruction, overall reform cannot succeed without sufficient members of full-time faculty with sufficient opportunities for continued staff development, and with sufficient opportunity for participation in institutional governance.

The Legislature further finds that, absent resources to reimburse the state-mandated costs of this act, new full-time faculty to replace part-time faculty, and expanded programs for staff development, the viability or success, or both, of many of the reforms in this act will be jeopardized. The Legislature recognizes that due to unanticipated fiscal conditions the State cannot immediately fund all of the reforms contained in this act. The Legislature also recognizes, however, that if minimal funding is not soon provided that it would be inappropriate to proceed with many reforms. (Stats. 1988, ch. 973, § 70, subd. (a).)

Claimants' Position

Claimant Santa Monica Community College District asserts that the test claim statutes and regulations constitute a reimbursable state mandate within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to do the following pursuant to the code sections and title 5 regulations cited:

Education Code

- A) Establishing and implementing policies and procedures, and periodically updating those policies and procedures regarding the employment of faculty and the resolution of disputes on hiring and tenure issues.

¹³ Board of Governors, California Community Colleges, Board Certification Regarding Adequate Funding for Phase II of AB 1725. (Agenda Item 14) November 8-9, 1990.

- B) Establishing and implementing minimum standards for the employment of academic and administrative staff. (§ 70901, subd. (b)(1)(B).)
- C) Consulting with and advising the board of governors regarding the minimum qualifications for faculty and administrators. (§ 87357, subd. (a)(1).)
- D) 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 (§ 87357, subd. (a)(2)).
- E) 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 (§ 87358).
- F) 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. (§ 87359.) These regulations shall require all of the following:
 - (1) 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.
 - (2) 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.
 - (3) 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) 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 January 1, 1989, shall remain in effect (§ 87360, subd. (a)).
- H) Consulting with the faculty's exclusive representative prior to engaging in collective bargaining on these procedures in those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, (§ 87610.1, subd. (a)).

- I) 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 (§ 87610.1, subd. (b)).
- J) 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 (§ 87610.1, subd. (b)).
- K) 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 a 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. 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 (§ 87740, subd. (c)).
- L) 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 (§ 87610.1, subd. (d)).

- M) 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 (§ 87611).
- N) 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 (§ 87663, subs. (c) & (d)).
- (1) 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 (§ 87663, subd. (e)).
 - (2) 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 (§ 87663, subd. (f)).
 - (3) Conducting evaluations of faculty members of a community college district to the extent practicable using student evaluations (§ 87663, subd. (g)).
 - (4) 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 (§ 87663, subd. (h)).
 - (5) Evaluating administrators pursuant to evaluation procedures established by the governing board and, to the extent possible, to include faculty evaluation (§ 87663, subd. (i)).
- O) 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 (§ 87714).
- P) 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 (§ 87743.2).
- Q) Receiving and determining faculty applications to add faculty service areas for which the faculty member qualifies (§ 87743.3).
- R) 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 (§ 87743.3).
- S) 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 (§ 87743.4).
- T) 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 (§ 87743.5).

Title 5, California Code of Regulations Provisions

- A) 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 (Cal. Code Regs., tit. 5, § 53130).
- B) Establish and implement policies to recognize faculty who were qualified to teach in their respective discipline under the minimum qualifications when they were employed (Cal. Code Regs., tit. 5, § 53403).
- C) Determine whether applicants for college faculty or educational administrator positions have qualifications that are at least equivalent to the minimum conditions specified, including verifying all of the following (Cal. Code Regs., tit. 5, § 53430, subd. (a)):
 - (1) All degrees and units used to satisfy minimum qualifications are from accredited institutions, unless otherwise specified (Cal. Code Regs., tit. 5, § 53406).
 - (2) 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 (Cal. Code Regs., tit. 5, § 53407).
 - (3) The minimum qualifications for service as a community college faculty member teaching any credit course, or as a counselor or librarian (Cal. Code Regs., tit. 5, § 53410).
 - (4) Possession of a bachelor's degree in the discipline of the proposed assignment plus a professional license or certification (Cal. Code Regs., tit. 5, § 53410.1).
 - (5) Possession of the minimum qualifications for a faculty member teaching a noncredit course (Cal. Code Regs., tit. 5, § 53412).
 - (6) Possession of the minimum qualifications for a faculty member teaching disabled programs and services (Cal. Code Regs., tit. 5, § 53414).
 - (7) Possession of the minimum qualifications for a faculty member teaching as a learning assistance or learning skills coordinator or instructor, or tutoring coordinator (Cal. Code Regs., tit. 5, § 53415).
 - (8) Possession of the minimum qualifications for a faculty member instructing or coordinating general or occupational work experience education (Cal. Code Regs., tit. 5, § 53416).
 - (9) Possession of 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 (Cal. Code Regs., tit. 5, § 53417).
 - (10) Possession of the minimum qualifications for service as an educational administrator (Cal. Code Regs., tit. 5, § 53420).
- D) Develop and agree 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 member employed under the authority granted by this section possess qualifications that are at least the equivalent to the applicable minimum qualifications specified in this Division (Cal. Code Regs., tit. 5, § 53430, subd. (b)).

- E) 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 (Cal. Code Regs., tit. 5, § 53430, subd. (c)).
- F) To be bound by the provisions of the subchapter until a joint agreement is reached and approved pursuant to subdivision (b) (Cal. Code Regs., tit. 5, § 53430, subd. (d)).

In complying with these alleged mandates, claimant alleges more than \$1000 in 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”¹⁴

Claimant’s rebuttal comments regarding specific statutes or regulations are discussed below.

State Agency Position

The Chancellor’s Office of the California Community Colleges filed comments on March 11, 2004, asserting that none of the activities in the statutes or regulations claimed constitute reimbursable mandates. According to the Chancellor’s Office, the activities either do not mandate a program on a community college district, or do not constitute a new program or higher level of service, or do not impose “costs mandated by the state” because the activities are already funded. The comments are described in more detail below.

The Department of Finance did not file comments on the test claim.

II. DISCUSSION

Issue 1: Do the test claim statutes and regulations impose a state-mandated new program or higher level of service subject to article XIII B, section 6, of the California Constitution?

The courts have found that article XIII B, section 6 of the California Constitution¹⁵ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁶ “Its

¹⁴ In its April 2004 rebuttal comments, claimant asserts that the March 11, 2004 comments of the California Community College Chancellor’s Office are incompetent and should be excluded from the record because they are not signed under penalty of perjury “with the declaration that it is true and complete to the best of the representative’s personal knowledge or information or belief.” (Cal.Code Regs., tit. 2, § 1183.02, subd. (c).) Staff disagrees. The Chancellor’s Office comments address pure questions of law. The existence of a reimbursable state mandate is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.) Commission decisions are based on independent analysis of the test claim statutes.

¹⁵ Article XIII B, section 6, subdivision (a), provides:

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹⁷ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹⁸

In addition, the required activity or task must be new, constituting a “new program or higher level of service” over the previously required level of service. To determine this, the test claim statute or regulation is compared to the legal requirements in effect immediately before enacting it.¹⁹

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁰ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²¹ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”²²

(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

¹⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735.

¹⁷ *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

¹⁸ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²³

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁵

A. Minimum Qualifications for the Employment of Faculty and Educational Administrators

As indicated in the background, the test claim statutes and regulations changed the process of credentialing faculty and educational administrators at community colleges to a process of establishing minimum qualifications for the hiring of these employees. “Faculty” is defined in Education Code section 87003 and section 53402 of the title 5 regulations as:

[T]hose employees of a community college district who are employed in academic positions that are not designated as supervisory or management . . . and for which minimum qualifications for service have been established by the board of governors Faculty include, but are not limited to, instructors, librarians, counselors, community college health services professionals, handicapped student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement, community college certification qualifications.

“Educational administrator” is defined in Education Code section 87002, subdivision (b), and section 53402 of the title 5 regulations as:

[A]n 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 the 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.

²³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Section 70, subdivision (d), of Statutes 1988, chapter 973 that codified the Minimum Qualifications program states that the requirements imposed shall be implemented and “be mandatory” only if the state board of governors certifies that adequate funding has been provided for Phase I of the program.

Sections 27 to 34, inclusive, and Sections 51 to 56, inclusive, of this act [section 28 codifies the Minimum Qualifications] shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies in writing to the Governor and to the Legislature that adequate funding has been provided for Phase I of transitional program improvement and for any applicable state mandates, as authorized by Education Code section 84755 [program based funding]. 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 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).

At its September 1989 meeting, the state board of governors certified that adequate funding had been provided for Phase I and, thus, community college districts were required to implement the activities mandated by the state as of that date.²⁶ Although the requirements were certified to have adequate funding,” the analysis continues to determine which activities impose a state-mandated new program or higher level of service on community college districts. The analysis of the funding is provided under issue 2.

1. Requirements Imposed on the State Board of Governors do not Impose State-Mandated Duties on Community College Districts.

a) Establishing Minimum Standards for Employment

Education Code section 70901, subdivision (b)(1)(B),²⁷ was added by the 1988 Reform Act and states in pertinent part the following:

[I]n 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 of those

²⁶ Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.

²⁷ Former section 200.11 (as amended by Stats. 1970, ch. 102) stated: “The board of governors shall establish minimum standards for the employment of academic and administrative staff in community colleges.”

purposes, perform the following functions: (1) Establish minimum standards as required by law, including, but not limited to, the following: [¶]. . . [¶] (B) Minimum standards for the employment of academic and administrative staff in community colleges.

Claimant asserts, in its April 2004 comments, that the minimum standards for the employment of academic and administrative staff must be established “in consultation with community college districts,” so that consultation activities of community college districts are mandated by the state as of the enactment of Statutes 1988, chapter 973.

The Chancellor’s Office, in its March 11, 2004 comments, states that this statute is not a state mandate because it does not apply to local districts, only to the Board of Governors of the California Community Colleges, a state agency. The Chancellor’s Office also states that this law was in existence before 1975 (former § 200.11, Stats. 1969, ch. 1026), and therefore not required to be reimbursed under article XIII B, section 6.

Staff finds that section 70901, subdivision (b)(1), does not impose a state-mandated activity on community college districts. In determining whether consultation is required of the districts, subdivision (e) of section 70901, which is cited in subdivision (b), sheds light on the legislative intent. The pertinent part of subdivision (e) states:

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. (Emphasis added.)

There is nothing in the plain language of section 70901 that requires community college districts to consult with the board of governors.

Therefore, staff finds that section 70901, subdivision (b)(1)(B) (Stats. 1988, ch. 973, Stats. 1998, ch. 1023), does not impose any state mandated duties on community college districts within the meaning of article XIII B, section 6.

b) Adopt Regulations to Establish Minimum Qualifications and Discipline Lists

Education Code section 87356, subdivision (a), requires the state board of governors to:

[A]dopt 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 program and services worker, an apprenticeship instructor, and a supervisor of health.

Education Code section 87357, subdivision (a), provides the rules for establishing and maintaining minimum qualifications pursuant to section 87356, and subdivision (b), requires the state to prescribe by regulation a working definition of “discipline.” Specifically, the board of governors is required to:

- Consult with, and rely primarily on the advice and judgment of the statewide academic senate for the minimum qualifications of faculty;
- Consult with, and rely primarily on the advice and judgment of an appropriate statewide organization of administrators for the minimum qualifications of educational administrators;
- Consult with, and rely primarily on the advice and judgment of appropriate apprenticeship teaching faculty and labor organization representatives for the minimum qualifications of apprenticeship instructors;
- Provide a reasonable opportunity for comment by other statewide representative groups in establishing the minimum qualifications;
- Establish a process to review at least every three years the continued appropriateness of the minimum qualifications and the adequacy of the means to which they are administered. The process shall be provided 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; and
- Relying primarily on 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. The board of governors shall also prepare and maintain a list of disciplines in which the master’s degree is not generally expected or available.²⁸

Claimant requests reimbursement to consult with and advise the board of governors regarding the minimum qualifications for faculty and administrators, and to conduct and to otherwise assist in the review of the continued appropriateness of the minimum qualifications for the employment of faculty and administrators. (§ 87357, subs. (a)(1) and (a)(2).) The claimant argues that these activities are mandated by the state and emphasizes the part of the statute regarding the board of governors relying *primarily* on the advice and judgment of the statewide academic senate and other organizations. Claimant states: “[i]t cannot be said that the Board will not consult with a wide range of community college districts. When it does so, the costs of those district activities shall be reimbursable.” As for the review process, claimant submits that the section “clearly requires community college districts to ‘conduct or otherwise assist’ in the review.” Claimant emphasizes the factors cited in *City of Sacramento v. State of California*

²⁸ Sections 53400-53420 of the title 5 regulations identify the minimum qualifications for faculty and educational administrators and (except for §§ 53411 & 53413) are discussed further in this analysis. Claimant did not request reimbursement for determining the minimum qualifications for faculty and administrators hired under sections 53411 and 53413, so staff makes no findings on those regulations. Section 53407 of the regulations incorporates the list of disciplines published by the Chancellor’s Office for those disciplines that require a masters’ degree, disciplines in which a master’s degree is not generally expected or available, but which require a bachelor’s degree; and disciplines in which the master’s degree is not generally available.

regarding the “legal and practical consequences of nonparticipation, noncompliance or withdrawal.”²⁹ According to claimant, “when community college districts are ‘asked to participate’ by the Chancellor or the Board of Governors, the ‘legal and practical consequences of nonparticipation’ must be seriously considered.”

The Chancellor’s Office states that community college districts are not required to perform these activities. Any claimant asked to participate has the option to decline. The Chancellor’s Office cites the *Kern High School Dist.*³⁰ case for authority that no mandate exists where a district voluntarily participates in a program.

Staff finds that section 87357, subdivision (a), does not impose any state-mandated duties on community college districts. The requirement in section 87357, subdivision (a)(1), is on the state board of governors to consult with the academic senate, or a statewide organization of administrators, or apprenticeship teaching faculty and labor organization representatives. In addition, there is no requirement in subdivision (a)(2) for districts’ “faculty, administrators, students and trustees” to participate in the review process.

Moreover, there is no evidence that community college districts are practically compelled to perform these activities; i.e. that “certain and severe penalties such as double taxation or other draconian consequences” will occur if a district does not advise the board of governors regarding the minimum qualifications for faculty, or does not assist in the review of the minimum qualifications.³¹

Accordingly, staff finds that sections 87356, subdivision (a) (Stats. 1993, ch. 506), and 87357, subdivision (a) (Stats. 1988, ch. 973, Stats. 1990, ch. 1302), do not impose state-mandated duties on community college districts.

According to section 87357, subdivision (b), the board of governors is required to develop a working definition of “discipline” and prepare and maintain a list of disciplines that are reasonably related to each other. The board of governors does this “relying primarily upon the advice and judgment of the statewide academic senate” which, in turn, is required to “consult with appropriate state-wide organizations representing administrators and faculty collective bargaining agents.”

Staff finds that section 87357, subdivision (b) (Stats. 1988, ch. 973, Stats. 1990, ch. 1302), is not a mandate on a community college district. Regarding consultation, nothing in the law indicates that community college district faculty are required to participate on the academic senate, or that the academic senate’s participation in consultation is anything but voluntary, so any consultation between it and the board of governors does not require an activity on the part of community college districts.

²⁹ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

³⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

³¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

c) Review of Community College Districts' Application of Minimum Qualifications

Section 87358 states: "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."

Claimant requests reimbursement as follows: "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."

The Chancellor's Office, in its March 2004 comments on the test claim, states that claimant's participation in the review is not required. "At most, the section authorizes the Board of Governors to require Claimant to demonstrate that it has been properly applying minimum qualification standards when it hires its academic employees." According to the Chancellor's Office, it has no record that the board of governors has ever conducted a review of claimant with respect to this issue, and further:

Claimant has not alleged that any of its faculty, administrators, or trustees have ever participated in the review of any other district's use of minimum qualifications under this section. Even if Claimant made that allegation, it cannot demonstrate that the participation was anything but voluntary.

Staff finds that section 87358 does not impose a state-mandated program on community college districts. The statute requires the state board of governors to "periodically designate a team of community college faculty, administrators, and trustees to review each ... district's application of minimum qualifications." (Emphasis added.) Being designated does not mandate the district's participation. Any designated faculty, administrators, or trustees may refuse to participate in a review team, and there is nothing in the law or the record that indicates that community college districts are legally or practically compelled to participate in the review of its minimum qualifications for employment. Thus, staff finds that section 87358 (Stats. 1988, ch. 973) is not mandated by the state.

2. Some of the Requirements Imposed on Community College Districts for Determining the Minimum Qualifications for Faculty and Educational Administrators Mandate a New Program or Higher Level of Service.

a) Determining the Minimum Qualifications of Applicants for Faculty and Educational Administrator Positions

Section 87359, subdivision (a), and section 53430, subdivision (a), of the regulations provide that no one may be hired to serve as a community college faculty or educational administrator unless the governing board of the community college district determines that the applicant possesses qualifications that are at least equivalent to the minimum qualifications required pursuant to section 87356 and the implementing title 5 regulations. The minimum qualifications have been adopted as regulations pursuant to section 87356, subdivision (a), for the following positions: faculty member teaching credit instruction; a faculty members teaching noncredit instruction; librarian; counselor; educational administrator; extended opportunity programs and services worker; disabled students program and services worker; apprenticeship instructor; and supervisor of health. Sections 53410 through 53420 of the title 5 regulations lay out the

minimum qualifications for these positions, and generally specify the educational degrees, professional licenses and certificates, and work experience required for each position.³² Claimant has requested reimbursement for determining the minimum qualifications for all the positions in these regulations except sections 53411 (minimum qualifications for health services professionals) and 53413 (minimum qualification for apprenticeship instructors), so staff makes no finding on those sections.

Section 53407 of the title 5 regulations incorporates the list of disciplines published by the Chancellor's Office (as required by Ed. Code, § 87357, subd. (b)) for those disciplines that require a masters' degree; disciplines in which a master's degree is not generally expected or available, but which require a bachelor's degree; and disciplines in which the master's degree is not generally available. And section 53406 requires that all degrees and units used to satisfy minimum qualifications are from accredited institutions,³³ unless otherwise specified in the regulations.

Section 87359, subdivision (a), and section 53430, subdivision (a), of the title 5 regulations further require that the criteria used by the community college governing board's action in making the employment determination "shall be reflected in the governing board's action to employ the individual."

These requirements do not apply to positions relating to community service or contract classes that do not award college credit and are not supported by state apportionment. Contract classes that do award college credit are subject to these provisions, even if they are not supported by state apportionment.³⁴

The claimant requests reimbursement to determine whether applicants for college faculty or educational administrators have qualifications that are at least equivalent to the minimum conditions specified.

³² Section 53410 lists the minimum qualifications for instructors of credit courses, counselors, and librarians. Section 53410.1 identifies the professional licenses and alternative qualifications for disciplines in accounting, counseling, engineering, and nutritional sciences/dietetics. Section 53412 lists the minimum qualifications for instructors of noncredit courses. Section 53414 lists the minimum qualifications for Disabled Students Programs and Services employees. Section 53415 lists the minimum qualifications for learning assistance or learning skills coordinators or instructors, and tutoring coordinators. Section 53416 lists the minimum qualifications for work experience instructors and coordinators. Section 53417 requires that an applicant hold a current occupational license or certificate when such a certificate or license is required for program or course approval. Section 53420 lists the minimum qualifications for educational administrators.

³³ "Accredited institution," for purposes of the test claim regulations, is defined in section 53406 of the title 5 regulations as: "a postsecondary institution accredited by an accreditation agency recognized by either the U.S. Department of Education or the Council on Post-secondary 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."

³⁴ California Code of Regulations, title 5, section 53401.

The Chancellor's Office states that, "the shift from the credentials system to the minimum qualifications system represented new obligations for districts ..." but also asserts that claimant has already been reimbursed for the activities.

Section 87359, subdivision (a), and section 53430, subdivision (a), of the title 5 regulations require community college districts to determine whether an applicant for a faculty or educational administrator position possesses qualifications that are at least equivalent to the minimum qualifications identified in the regulations:

- Extended Opportunity Programs and Services Professionals (§ 53402);
- Instructors of credit courses, counselors and librarians (§ 53410);
- Instructors of noncredit courses (§ 53412);
- Disabled Students Programs and Services Employees (§ 53414);
- Learning assistance or learning skills coordinators or instructors and tutoring coordinators (§ 53415);
- Work experience instructors or coordinators (§ 53416); and
- Educational administrators (§ 53420), as applicable.

In addition, determining whether the applicant possesses the following when required for the position:

- Professional licenses as alternative qualification (§ 53410.1);
- Accredited degrees and units (§ 53406);
- Discipline lists (§ 53407); and
- Licensed or certificated occupations (§ 53417).

The criteria used in making the employment determination are required to be reflected in the district's action to employ the faculty member or administrator.

Although the plain language prohibits the hiring of faculty or educational administrators unless the governing board determines the applicant possesses the minimum qualifications, when read in the context of the entire statutory and regulatory scheme, community college districts have an affirmative duty to determine the minimum qualifications of an applicant for these positions before employing the individual. Section 70902, subdivision (b)(4), requires the governing board of each community college district to "employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors." Moreover, the criteria used in making the employment determination must be reflected in the district's action. All action of the community college governing board must be open and public and all votes shall be recorded.³⁵

However, determining that an applicant meets the minimum qualifications for a faculty or educational administrator position in the Disabled Students Programs and Services (DSPS, § 53414) and in the Extended Opportunity Programs and Services (EOPS), and reflecting the

³⁵ Education Code section 71021 and 71022.

criteria used in the action to employ an applicant for positions in these programs are not mandated by the state. The DSPS and EOPS programs have been the subject of prior test claims, both of which were denied by the Commission on the ground that the programs were not mandated by the state. (CSM 02-TC-22, 02-TC-29.)

The DSPS program requires that as a condition of receiving funds, community college districts are required to perform accounting, reporting, and administrative activities that go beyond the federal requirements of the Americans with Disabilities Act and the Rehabilitation Act. Section 84850, subdivision (d), states:

As a condition of receiving funds pursuant to this section, each community college district shall certify that reasonable efforts have been made to utilize all funds from federal, state, or local sources which are available for serving disabled students. Districts shall also provide the programmatic and fiscal information concerning programs and services for disabled students that the regulations of the board of governors require. (Emphasis added.)

Section 56000 of the title 5 regulations implementing the DSPS program similarly provides:

This subchapter applies to community college districts offering support services, or instruction through Disabled Student Programs and Services (DSPS), on and/or off campus, to students with disabilities pursuant to Education Code sections 67310-12 and 84850. Programs receiving funds allocated pursuant to Education Code Section 84850 shall meet the requirements of this subchapter. (Emphasis added.)

The direct costs incurred under the DSPS program, including the salaries of DSPS faculty and educational administrators are funded through the DSPS program.³⁶

Similarly, the EOPS program provides academic and financial support to community college students whose educational and socioeconomic backgrounds might otherwise prevent them from successfully attending college. The activities required of the program are triggered by a community college district's decision to establish an EOPS program and to request and accept state funding. Section 69649 states:

(a) [t]he governing board of a community college district may, with the approval of the board, establish an extended opportunity program. Except as provided in subdivision (b), *in order to be eligible to receive state funding*, the program shall meet the minimum standards established pursuant to subdivision (b) of section 69648.

The costs incurred under the EOPS program, including the salaries of EOPS faculty and educational administrators are funded through the EOPS program.³⁷

³⁶ California Code of Regulations, title 5, section 56064.

³⁷ California Code of Regulations, title 5, section 56295.

Pursuant to the court's holding in *Kern High School Dist.*, activities performed as a condition of the receipt of funding are not mandated by the state.³⁸ With respect to optional funded programs like the DSPS and EOPS programs, the court reasoned as follows:

As to each of the optional funded programs here at issue, school districts are, and have been, free to decide whether to (i) continue to participate and receive program funding, even though the school district also must incur program-related costs associated with the . . . requirements, or (ii) decline to participate in the funded program. Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation – in other words, if, on balance, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits.³⁹

Therefore, staff finds that the requirements in Section 87359, subdivision (a), and section 53430, subdivision (a), of the title 5 regulations is a state mandate to determine that an applicant for a faculty or educational administrator position identified below possesses qualifications that are at least equivalent to the minimum qualifications before an action is taken to employ the person:

- Instructors of credit courses, counselors and librarians (§ 53410);
- Instructors of noncredit courses (§ 53412);
- Learning assistance or learning skills coordinators or instructors and tutoring coordinators (§ 53415);
- Work experience instructors or coordinators (§ 53416); and
- Educational administrators (§ 53420), as applicable.

In addition, determining whether the applicant possesses the following when required for the position:

- Professional licenses as alternative qualification (§ 53410.1);
- Accredited degrees and units (§ 53406);
- Discipline lists (§ 53407); and
- Licensed or certificated occupations (§ 53417).

Additionally, the criteria used in making the employment determination of faculty and educational administrators shall be reflected in the district's action.

These activities are not state-mandated for persons seeking employment in the DSPS or EOPS programs. (§§ 53402, 53414.)

³⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

³⁹ *Id.* at page 753.

Staff further finds that these activities, except for determining the minimum qualifications for instructors of noncredit courses (Cal. Code Regs., tit. 5 § 53412), constitute a new program or higher level of service. Prior to the 1988 Reform Act and its title 5 regulations, the Chancellor's Office assessed a person's qualifications and issued a credential to become a faculty member or administrator at a community college.⁴⁰ The determination of minimum qualifications has now been shifted to community college districts.

The California Supreme Court has held that a state-mandated new program or higher level of service results from the state having control of a program that was shifted to local governments or school districts:

Whether the shifting of costs is accomplished by compelling local governments to pay the costs of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, the result seems equally violative of the fundamental purpose underlying section 6 of that article.⁴¹

These activities are uniquely imposed on community college districts and are intended to provide an increased level of service to the public, so staff finds that they constitute a program within the meaning of article XIII B, section 6. Statutes 1988, chapter 973, section 4, subdivision (n), states that it "a general purpose of this act to improve quality education . . ."⁴² Subdivision (q) further states that the focus of the minimum qualifications program is to help the community colleges ensure they will select the faculty and administrators who are competent to work effectively at the college level, and to ensure that the minimum qualifications for faculty are the same except where clearly unreasonable or impractical.

The Chancellor's Office asserts, however, that determining the minimum qualifications for instructors of noncredit courses, sometimes referred to as classes for adults, has been performed by the districts since 1970 (citing former section 52600 of the title 5 regulations).

At least since 1983, and prior to the test claim regulations that were pled in this test claim, community college districts assessed the minimum qualifications for instructors of noncredit courses (or "classes for adults")⁴³ and issued a Certificate of Qualifications to teach them. As stated in former section 52275 of the title 5 regulations:

⁴⁰ Chancellor of the California Community Colleges, comments filed March 2004, p. 11. See also former California Code of Regulations, title 5, section 52030 et seq., Register 83, No. 29 (July 16, 1983) page 628.15.

⁴¹ *Lucia Mar, supra*, 44 Cal.3d 830, 836.

⁴² See also, Statutes 1988, chapter 973, section 70, subdivision (b)(1), which states the following: "It is the intent of the Legislature that those changes [referring to Phase I changes], combined in proper sequence with the professional improvement of faculty, will improve the overall quality of education within the system."

⁴³ The statute that authorized this regulation is former Education Code section 87295, which states: "The board of governors shall, by regulation, establish minimum standards authorizing

An applicant shall be eligible for a Certificate of Qualifications if the requirements of both of the following subdivisions are satisfied:

(a) The applicant satisfies one of the following requirements.

(1) The applicant has successfully completed four years of higher education with a major in a subject matter area.

(2) The applicant has completed four years of occupational experience in a subject matter area.

(b) *The district*, which maintains the community college which will employ the applicant, *certifies that the applicant has adequate training and experience to teach the classes for which the applicant is to be employed.*⁴⁴ (Emphasis added.)

And as former section 52277 of the regulations stated:

A Certificate of Qualifications authorizes its holder to teach the noncredit classes named on the credential in a community college maintained by the district named on the credential document.⁴⁵

This requirement for certification carried forward into early versions of the test claim regulation that applies to instructors of noncredit courses. Section 53412,⁴⁶ operative November 30, 1990, required the same qualifications for instructors of noncredit courses as under prior law:

(a) Successful completion of four years of higher education with a major in a discipline, or completion of four years of occupational experience in a discipline; and

(b) Certification by the district that the applicant has adequate training and experience to teach the classes for which he or she is to be employed.

The district certification requirement was deleted effective June 26, 1992,⁴⁷ when section 53412 was amended to specify that "the minimum qualification 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." So under current law the minimum qualification to teach noncredit courses is a master's degree, except for the following courses that require a bachelor's degree in a specified discipline: interdisciplinary basic skills courses, basic skills courses in mathematics, reading and/or writing, citizenship, English as a second language, health and

service for instructors of classes for adults and shall establish procedures for the issuance of appropriate certificates of qualification."

⁴⁴ Former California Code of Regulations, title 5, section 52275, Register 83, No. 29 (July 16, 1983) page 628.48.1.

⁴⁵ Former California Code of Regulations, title 5, section 52277, Register 83, No. 29 (July 16, 1983) page 628.48.1.

⁴⁶ Added by Register 90, Nos. 48-50 (December 14, 1990) page 330.2, operative November 30, 1990.

⁴⁷ Register 92, No. 26 (June 16, 1992) page 329.

safety, home economics, courses intended for older adults, parent education, and a short-term vocational course.

Thus, under the pre-1992 regulation, a person could teach a noncredit course by completing four years of higher education with a major in the subject matter area, or four years of occupational experience in a subject matter area. Under current law, the prospective teacher must have a master's degree, or in specified instances a bachelor's degree. (§ 53412.)

Although the minimum qualifications have changed since the test claim regulation, determining the minimum qualifications has not. There is nothing to indicate that determining the minimum qualification under current law is a higher level of service than granting certification to teach under prior law. Each requires the community college to assess an applicant's qualifications. The state has never made this assessment for instructors of noncredit courses, so this activity was not shifted from the state to local districts.

Therefore, staff finds that determining the minimum qualifications of an applicant for a faculty or educational administrator position in a noncredit course (Cal. Code Regs., tit. 5 § 53412)⁴⁸ does not constitute a new program or higher level of service.

Accordingly, staff finds that section 87359, subdivision (a), and section 53430, subdivision (a), of the title 5 regulations mandate a new program or higher level of service on community college districts for the following activities:

- Determine that an applicant for a faculty or educational administrator position possesses qualifications that are at least equivalent to the minimum qualifications identified in sections 53406, 53407, 53410, 53410.1, 53415, 53416, 53417, and 53420 as applicable, before an action is taken to employ the individual.
- The criteria used in making the employment determination of faculty and educational administrators shall be reflected in the district's action.

Community college districts are *not* entitled to reimbursement for these activities when employing faculty or educational administrators in the following programs and courses: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.), or noncredit courses. (Cal. Code Regs., tit. 5, § 53412.)

b) Development of the Process, Criteria, and Standards for Faculty Determinations

Section 87359, subdivision (b), addresses the development of the process, criteria, and standards for qualifications that are equivalent to the minimum qualifications established by the state. This subdivision provides:

- The process, criteria, and standards for reaching determinations regarding faculty [whose qualifications are equivalent to the minimum qualifications (see subs. (a) & (b))] shall

⁴⁸ Added by Register 90, No. 49 (Dec. 14, 1990) page 330.2, operative November 30, 1990; Register 91, No. 50 (July 19, 1991) page 332; Register 92, No. 26 (July 27, 1992) pages 328-329; Register 93, No. 42 (Nov. 4, 1993) pages 329-330.

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 regulation's authority possess qualifications that are at least equivalent to the applicable minimum qualifications specified in the regulations.
- 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 section 87358.

Section 53430, subdivisions (b) and (c), of the title 5 regulations are the same as the requirements in section 87359, subdivision (b).

The academic senates on each campus exist "[i]n order that the faculty may have a formal and effective procedure for participating in the formation and implementation of district policies on academic and professional matters."⁴⁹ Academic senates are created by a vote of the faculty. Once created, the governing board of the community college district is required to recognize the academic senate and authorize the faculty to: (1) fix and amend by vote of the full-time faculty the composition, structure, and procedures of the academic senate; and (2) "provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate."⁵⁰

Staff finds that the activities required by section 87359, subdivision (b), and section 53430, subdivisions (b) and (c), of the title 5 regulations, are mandated by the state, including as applied to noncredit course instructors, as there is no indication that they are excluded from the process, criteria, and standards referred to in the regulation and statute. The exception is for faculty and administrators employed under the DSPS and EOPS programs, for which developing the process, criteria, etc. is not a mandate. As indicated above, the DSPS and EOPS programs are voluntary programs and the requirements are imposed only as a condition of funding.

Staff further finds that the bulleted activities are newly required of community college districts as they relate to the employment of all other faculty positions and provide a higher level of service to the public.

Thus, staff finds that section 87359, subdivision (b), and section 53430, subdivisions (b) and (c) of the title 5 regulations, mandate a new program or higher level of service for the following activities:

- The process, criteria, standards, and policies and procedures for reaching determinations regarding the employment of faculty or administrators whose qualifications are equivalent to the minimum qualifications shall be developed and agreed upon jointly by

⁴⁹ California Code of Regulations, title 5, sections 53200, 53201.

⁵⁰ California Code of Regulations, title 5, section 53202.

representatives of the governing board and the academic senate. (§ 87359, subd. (b); Stats, 1988, ch. 973, Stats 1993, ch. 506, Cal. Code Regs, tit. 5, § 53430, subd. (b).)

- The agreed upon process for hiring faculty 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 possess qualifications that are at least equivalent to the applicable minimum qualifications specified in the regulations. (§ 87359, subd. (b), Cal. Code Regs, tit. 5, § 53430, subd. (b).)
- The process for hiring faculty 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 section 87358. (§ 87359, subd. (b), Cal. Code Regs, tit. 5, § 53430, subd. (c).)
- The governing board shall approve the process, criteria, standards, and policies and procedures for reaching determinations regarding the employment of faculty and administrators. (§ 87359, subd. (b); Cal. Code Regs, tit. 5, § 53430, subd. (b).)

Community college districts are *not* entitled to reimbursement for these activities when employing faculty or administrators in the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), and Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.)

Section 87359, subdivision (d), states that “[u]ntil a joint agreement is reached and approved pursuant to subdivision (b), the district process in existence on January 1, 1989, shall remain in effect.” Similarly, subdivision (d) of the title 5 regulation states: “[u]ntil 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.” Thus, until there is an agreement by the governing board and the academic senate on the process, criteria, and standards for the employment of faculty, the district cannot apply additional qualification standards to faculty applicants that go beyond the scope of the minimum conditions established by the regulations.

Staff finds that this provision (§ 87359, subd. (c) & Cal.Code Regs., tit. 5, § 53430, subd. (d)) is not a state mandate because it does not require a community college activity. It merely requires using existing processes or the minimum qualifications regulations (already found above to be a state-mandated new program or higher level of service) until agreement is reached with the academic senate on qualifications that are equivalent to them.

c) Develop Hiring Criteria

In establishing the 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. (§ 87360, subd. (a).)

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. (§ 87360, subd. (b).)

Until a joint agreement is reached and approved, the district process in existence on January 1, 1989 remains in effect. (§ 87360, subd. (b).)

Staff finds that, based on the language in the statute, that these activities are a state mandate. Since they were not required under prior law, staff also finds that they are a new program or higher level of service for community college districts to do the following:

- No later than July 1, 1990, develop the hiring criteria for faculty and administrators that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (§ 87360, subd. (a).)
- No later than July 1, 1990, develop hiring criteria, policies, and procedures for new faculty members that are developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board. (§ 87360, subd. (b).)

d) Providing an Affidavit that Academic Employees of the District Possessed the Minimum Qualifications for the Work they Performed in the Preceding 12 Months

Section 87714 (as added by Stats. 1981, ch. 470, and amended by Stats. 1990, ch. 1302) states:

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.

Claimant pled the following activity based on this section: “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.”

In comments filed in March 2004, the Chancellor’s Office states that this section stated as early as 1976 (Stats. 1976, ch. 1010) the following:

Each general superintendent of community colleges shall make an annual report of the schools under his jurisdiction to the county superintendent of schools on forms furnished by the board of governors which report shall include an affidavit that all employers in positions requiring certification qualifications were properly certificated for the work performed.

The Chancellor’s office also states that the obligation to ensure that all academic employees were qualified has existed since 1959. Section 13566 (Stats. 1959 chs. 2 & 458) required district superintendents of schools to annually report that all employees in positions requiring certification qualification were properly certificated for the work performed. According to the Chancellor’s comments: “Because community college districts grew out of K-12 districts, the terminology has changed somewhat since 1959, but the underlying obligation has been in place.”

The Chancellor’s Office also states that duties to be performed by the superintendents of each community college district were added by Statutes 1963, chapter 629. Former section 939 (later

former § 72413) required the chief executive officer to determine that employees who require certification have valid certificated documents.

The claimant's rebuttal comments state that former section 13566 (recodified as § 87714 by Stats. 1976, ch. 1010) required the report, including the specified affidavit, to be made to the county superintendent of schools, while the 1981 version required the report to be made to the board of governors. Therefore, according to the claimant, section 87714 requires a new program or higher level of service. Claimant also states that the Chancellor's reference to former section 939 is not relevant because it requires only a determination, but not a report or affidavit.

The plain language of the statute requires providing the affidavit "at times required by the board of governors." Whether an affidavit has been requested or not, the statute authorizes the state board of governors to require one from the district in the future. Therefore, staff finds that section 87714 (Stats. 1981, ch. 470, Stats. 1990, ch. 1302)⁵¹ is a state mandate on community college districts to, 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.

Staff also finds, however, that section 87714 (Stats. 1981, ch. 470) is not a new program or higher level of service. Former section 87714 (Stats. 1976, ch. 1010) also required an affidavit. Even though before 1981, the report and affidavit were submitted to the county superintendent of schools, submitting the same information and affidavit to the Chancellor's Office is not a new program or higher level of service (the report requirement was deleted in the 1981 version). In fact, this activity was also part of the 1959 Education Code (Stats. 1959, ch. 458). Therefore, staff finds that section 87714 (Stats. 1981, ch. 470, Stats. 1990, ch. 1302) is not a new program or higher level of service.

e) Authority to Continue to Employ Credentialed Academic Employees Qualified at Time of Initial Hire.

Section 53403 of the title 5 regulations states:

Notwithstanding changes that may be made to the minimum qualifications established by this division, or to the implementing discipline lists adopted by the Board of Governors, [in § 53407] the governing board of a community college 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

⁵¹ The 1981 version of 87714 (Stats. 1981, ch. 470) required the same activity as the current version: "The chief executive officer of each community college district shall, at times as 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."

possess the minimum qualifications specified for discipline or service covered by the credential until the expiration of that credential.⁵²

Claimant pled the activity of establishing and implementing policies to recognize faculty who were qualified to teach in their respective disciplines under the minimum qualifications when they were employed.

The Chancellor's Office states that this section merely permits districts to "grandparent" employees in under the minimum qualifications or faculty service areas in effect when the employees were hired, even if those qualifications or faculty service areas later changed. The Chancellor's Office asserts that there is no mandate involved.

Claimant's rebuttal comments state: "While admitting the 'grandfathering' provision, [the Chancellor's Office] does not describe who, how or when this should be done. The test claim merely recognizes the need to establish and implement policies that allow implementation of the 'grandfather' provision."

Staff finds that section 53403 of the title 5 regulations is not a state-mandated new program or higher level of service. The section's plain language authorizes but does not require community college districts to retain employees who were hired before the establishment of the minimum qualifications, and deems those employees to possess the minimum qualifications, until the expiration of their credentials. It does not require the community college district to assess the qualifications of employees at the time the regulation was adopted. Because section 53403⁵³ does not require community college districts to engage in an activity, staff finds that this section is not a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

B. Faculty Evaluations

The claimant pled section 87663 as amended by Statutes 1988, chapter 973 and Statutes 1990, chapter 1302.⁵⁴ The 1988 and 1990 amendments made the following changes to subdivisions (a) and (b) regarding regular⁵⁵ and temporary⁵⁶ employees:

⁵² Education Code section 87355, although not a test claim statute, requires the board of governors to adopt this regulation.

⁵³ Register 92, No. 26 (June 26, 1992) operative July 27, 1992, page 328, amended by Register 93, No. 42 (Oct. 5, 1993) operative November 4, 1993, page 328.

⁵⁴ The 1990 amendment changed "certificated employee" in subdivision (b) to "faculty member."

⁵⁵ "A 'regular' employee is . . . one who has achieved tenure." (§ 87609.)

⁵⁶ Temporary employees are defined several ways. They are employees who: (1) may be used to fill temporary vacancies of regular employees (§ 87478); serve during the first three months of a school term to instruct temporary classes or perform other duties (§ 87480); (3) fill needs due to spikes in enrollment (§ 87482); or teach not more than 67 percent of the hours per week of a full-time assignment for regular employees having similar duties (§ 87482.5).

(a) Contract [or probationary] 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~~ 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.

Subdivisions (c) through (i) were added to section 87663 in 1988 (Stats. 1988, ch. 973, § 51) as follows:

(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 member⁵⁷ 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.

Section 70, subdivision (d), of the 1988 statute further states that "Sections 51 to 56" of the bill shall be implemented and "be mandatory" only if the state board of governors certifies that adequate funding has been provided. At its September 1989 meeting, the state board of

⁵⁷ Probationary faculty members are contract employees who are on a tenure track. Temporary employees are generally not on a tenure track, except as provided in section 87478.

governors certified that adequate funding had been provided and, thus, community college districts were required to implement section 87663 as of that date.⁵⁸

In addition, section 53130 of the title 5 regulations requires that “[t]he 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.”

Claimant requests reimbursement for the following activities:

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.

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.

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.

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

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.

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

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.

The Chancellor’s Office, in its March 2004 comments, asserts that: (1) subdivision (f) requires the exclusive representative to consult with the academic senate prior to bargaining, but contains no district obligations; (2) statements of legislative intent in subdivision (g) regarding faculty evaluations including student evaluations if practicable is not a legal mandate; (3) the obligation of districts to provide for the evaluation of faculty and administrators preceded January 1, 1975; and (4) only districts that have chosen to collectively bargain their evaluation procedures are affected by subdivision (e)’s requirement to conduct evaluation pursuant to an agreement. The

⁵⁸ Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.

Chancellor cites *Kern High School Dist.*⁵⁹ case for the proposition that if the district elects to do something, any downstream activity is not a reimbursable mandate. Moreover, the Chancellor's Office states that if the bargained evaluation procedures were in place before the 1988 amendments (Stats. 1988, ch. 973) the claimant has not performed a new program or higher level of service. And if the claimant has been reimbursed under the collective bargaining mandate, reimbursement under this statute would be double recovery.

Claimant, in the April 2004 rebuttal comments, states:

Even if there is a collective bargaining agreement, it may, or may not, encompass faculty evaluation procedures. The inclusion of subdivision (e) in the test claim will allow the parameters and guidelines to provide for reimbursement for these faculty evaluation procedures, with the exception of if, or when, they are part of the district's collective bargaining agreement.

Claimant also asserts that the requirements of section 87663 have been greatly expanded since 1975, especially since the 1988 amendments.

Staff finds, based on the plain language of subdivision (a), that it is a state mandate to evaluate a regular employee once every three academic years, and to evaluate temporary employees within the first year of employment. Thereafter, evaluation for temporary employees shall be at least once every six regular semesters, or once every nine regular quarters, as applicable. Staff also finds that, based on the plain language in subdivision (a), evaluation of temporary employees is a state mandate, and also a new program or higher level of service because it was not required under prior law.

However, evaluating regular employees every three years is less frequent than under prior law, which called for evaluation once every two academic years. This is not a higher level of service. Therefore, staff finds that this amendment in subdivision (a) of section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) on evaluating regular employees is not a new program or higher level of service.

Staff also finds that the amendment to section 87663, subdivision (b), made by Statutes 1990, chapter 1302, does not impose a state-mandated new program or higher level of service. This amendment substituted "faculty member" for "certificated employee" but imposes no state mandates on districts.

Staff finds that it is a state-mandated new program or higher level of service for an evaluation to include a peer review process as specified by subdivision (c), and that the peer review process conform to the requirements of subdivision (d): that it be on a departmental or divisional basis, and address the forthcoming demographics of California and the principles of affirmative action, and "for the process to 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."

Staff further finds that section 87663, subdivisions (e) and (f), do not impose any state-mandated duties on community college districts. Subdivision (e) is legislative recognition that "faculty

⁵⁹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

evaluation procedures may be negotiated as part of the collective bargaining process.” Subdivision (f) requires, in 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.” Subdivision (f) does not impose any requirements on community college districts.

Subdivision (h) of section 87663 states:

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.

Because this section entitles the probationary faculty member to be evaluated under clear, fair and equitable evaluation procedures locally defined through the collective bargaining process, and the procedures are required to ensure good faith treatment of the probationary faculty member, staff finds that subdivision (h) of section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) is a state mandate.

Staff finds that section 87663, subdivision (h), imposes a new program or higher level of service. Under section 87602, a contract employee is a probationary employee. Under prior law, contract employees are evaluated at least once each academic year. (§ 87663, subd. (a).) Since at least 1971, districts have been required to evaluate certificated employees (i.e., faculty) “in accordance with the standards and procedures established by the rules and regulations of the governing board of the employing district.”⁶⁰ Also since 1971, districts have been required to adopt rules and regulations in consultation with faculty “establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its certificated employees to meet in the performance of their duties.” The procedures and standards are to be uniform for all contract employees with similar general duties and responsibilities, and uniform for regular employees of the district with similar general duties and responsibilities.⁶¹

However, under prior law, the district was not required to develop “evaluation procedures locally defined through the collective bargaining process” for probationary employees. Therefore, staff finds that subdivision (h) of section 87663 is a new program or higher level of service to develop evaluation procedures that are collectively bargained for probationary employees where the faculty has chosen to elect an exclusive representative.

Two phrases in subdivisions (g) and (i) of section 87663 begin with the phrase “It is the intent of the Legislature...” Subdivision (g) declares legislative intent that faculty evaluations include, to the extent practicable, student evaluation. Subdivision (i) declares legislative intent that evaluations of administrators include, to the extent practicable, faculty evaluation. Courts have

⁶⁰ Former Education Code section 13481 (Stats. 1971, ch. 1654), Education Code section 87663, subdivision (b) (Stats. 1976, ch. 1010)

⁶¹ Former Education Code section 13481.05 (Stats. 1971, ch. 1654). Education Code section 87664 (Stats. 1976, ch. 1010, Stats 1990, ch. 1302).

held that statements of Legislative intent do not give rise to a mandatory duty.⁶² Therefore, staff finds that as declarations of legislative intent, neither subdivisions (g) nor (i) of section 87663 are state mandates.

Subdivision (i) also states: "Governing boards shall establish and disseminate written evaluation procedures for administrators." Staff finds that this provision is a state-mandated new program or higher level of service to establish and disseminate written evaluation procedures for administrators.

Finally, section 53130 of the title 5 regulations states that the district governing board "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." The Chancellor's Office argues that "the requirements that currently appear in section 53130 have existed without lapse since before January 1, 1975 and cannot be claimed for reimbursement under this process."

Section 53150 was added to the title 5 regulations in 1991.⁶³ In 1971, however, section 13481.05 (Stats. 1971, ch. 1653) was enacted to provide that:

The governing board of each district in consultation with the faculty shall adopt rules and regulations establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its certificated employees to meet in the performance of their duties. Such procedures and standards shall be uniform for all contract employees and shall be uniform for all regular employees of the district.

Section 13481.05 was renumbered to section 87664 in the 1976 Education Code and has not been pled in this test claim.

Even though adopting rules and regulations establishing the specific procedures for evaluating contract and regular employees was in prior law, new rules and regulations must be adopted due to the amendments to section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) that are discussed above. For example, prior law did not require a peer review process for faculty evaluations and was limited to adopting rules and regulations for the evaluation of contract and regular employees. Under section 53130, rules and regulations have to be adopted for "each academic employee."

Therefore, staff finds that section 53130 of the title 5 regulations imposes a state mandated new program or higher level of service on community college districts to adopt and cause to be printed and made available to each academic employee of the district amended rules and regulations that reflect the new requirements imposed by Education Code section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) and provide for the evaluation of the performance of academic employees in their assigned duties. This is a one-time activity.

⁶² *Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633-634.

⁶³ Register 91, No. 25, effective April 5, 1991.

In sum, staff finds that section 87663 (Stats. 1988, ch. 973, Stats, 1990, ch. 1302) imposes a state-mandated new program or higher level of service on community college districts to do as follows:

- Evaluate a temporary employee within the first year of employment, and at least once every six regular semesters or once every nine regular quarters thereafter (§ 87663, subd. (a).);
- Include a peer review process in faculty evaluations, and for the peer review process to be on a departmental or divisional basis, and address the forthcoming demographics of California and the principles of affirmative action, and for the process to 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 (§ 87663, subds. (c) & (d));
- Develop “evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative” for probationary faculty (§ 87663, subd. (h));
- Establish and disseminate written evaluation procedures for administrators. (§ 87663, subd. (i).) This is a one-time activity;
- Adopt and cause to be printed and made available to each academic employee of the district amended rules and regulations that reflect the new requirements imposed by Education Code section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) and provide for the evaluation of the performance of academic employees in their assigned duties. This is a one-time activit. (Cal. Code Regs., tit. 5, § 53150); and
- Community college districts are *not* entitled to reimbursement for these evaluation activities for faculty or administrators employed in the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. & 53414), and Extended Opportunity Programs and Services. (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.)

C. Tenure Grievances, Arbitration and Judicial Review

Claimant pled sections 87610.1 and 87611, added by Statutes 1988, chapter 973. Section 87610.1 provides an alternative arbitration grievance process for a probationary or contract faculty employee⁶⁴ to challenge a district’s decision not to grant tenure or reappoint the employee as a contract employee for the following academic year under specified situations. The alternative process is allowed only in those community college districts where tenure evaluation procedures are collectively bargained and the grievance arbitration procedures are in the collective bargaining agreement. Pursuant to section 87611, the decision reached in the grievance arbitration proceeding is subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

⁶⁴ Education Code section 87600 limits applicability of this test claim statute to faculty, not including administrators. (§ 87603.)

If there is no contractual grievance procedure resulting in arbitration, tenure grievances shall proceed under existing law pursuant to section 87740. Section 87740 provides for a hearing under the Administrative Procedure Act conducted by an administrative law judge who prepares a proposed (nonbinding) decision containing a determination as to the sufficiency of the cause and a recommendation as to disposition. The governing board makes the final determination. Section 87740 has been in law since before 1975 (Stats. 1965, ch. 1110, as former § 13443). The claimant also pled section 87740 as amended in 1995.

1. Overview of Tenure Grievance Law

The authority to grant tenure or reappoint a faculty employee for another year is addressed in sections 87600 et seq. Generally, all district academic employees are either contract employees, regular employees, or temporary employees. (§ 87604.) A contract employee is a probationary employee and a regular or tenured employee is a permanent employee. (§ 87602.) A contract employee is an employee of the district who is employed on the basis of a contract in accordance with the provisions of sections 87605 or 87608, subdivision (b). (§ 87601.)

For the first academic year of employment with the district, each faculty member must be employed by contract. (§ 87605.) At the completion of the faculty member's first academic year, the district has the discretion to decide whether or not to contract with the faculty member for the following academic year, or to employ the contract employee as a regular, tenured employee for all subsequent academic years. The decision of the district is not subject to judicial review, except as expressly provided in sections 87610.1 and 87611. (§ 87608.)

The district has the same discretion following completion of the faculty member's second academic year, except a renewal contract may be for the "following two academic years." (§ 87608.5.) If a contract employee is working under the 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; or (c) employ the contract employee as a regular, tenured employee for all subsequent academic years. (§ 87608.5.)

If a contract employee is employed under his or her third consecutive contract entered into pursuant to section 87608.5, the governing board shall either employ the probationary employee as a tenured employee for all subsequent academic years, or not grant this status and terminate the employee. (§ 87609.)⁶⁵

Before the district can exercise discretion regarding continued employment of a contract employee, the district must evaluate the employee in accordance with the evaluation standards and procedures established pursuant to section 87660 et seq. (§ 87607.) In addition, the governing board must receive the most recent evaluations, recommendation of the superintendent of the district, and the recommendation of the president of the community college before the district exercises its discretion regarding the continued employment of a faculty member. The evaluations and recommendations are considered in a lawful meeting of the board. (§ 87607.) The governing board shall give written notice and the reasons for its decision regarding the first

⁶⁵ *McGuire v. Governing Board, supra*, 161 Cal.App.3d 871, 874.

year and second year contract employees on or before March 15 of the academic year by registered or certified mail. Failure to give notice shall be deemed an extension of the existing contract.

For employees under their third consecutive contract for whom the board must decide to either grant tenure or not employ pursuant to section 87609, the board is required to give written notice of its decision and the reasons therefor on or before March 15 by registered or certified mail. Failure to give notice shall be deemed a decision to employ the faculty member as a tenured employee for all subsequent academic years. (§ 87610.)

As indicated above, when the contract (or probationary) employee objects to the governing board's decision to not grant tenure or not reappoint the employee to another contract year pursuant to sections 87608, 87608.5, and 87609, the governing board's decision may be reviewed in accordance with section 87610.1. That statute, added by the 1988 Reform Act, states in relevant part the following:

- (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 group of employees in accordance with [Gov. Code 3450 et seq.]. 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 arbitration is not initiated by the exclusive representative, the district shall require the employee submitting the grievance to file with the arbitrator or another appropriate party designed 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... 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 [Gov. Code 3450 et seq.].

Thus, in those community college districts where tenure evaluation procedures are collectively bargained, and there is a contractual grievance procedure resulting in arbitration, the employee can seek review before the arbitrator on the following grounds:

- With respect to a decision by the governing board to not grant tenure, the employee can allege that the governing board either made a decision that was unreasonable to a reasonable person – or the decision to not grant tenure violated, misinterpreted, or misapplied the board's policies and procedures concerning the evaluation of the employee.
- With respect to the decision to not reappoint the contract employee, the employee can allege that the governing board violated, misinterpreted, or misapplied the board's policies and procedures concerning the evaluation of the employee.

Pursuant to section 87611, the arbitrator's decision is subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to a hearing in accordance with section 87740 before an administrative law judge.

2. The Tenure Grievance Arbitration Procedure (§§ 87610.1 and 87611) does not Impose a State Mandate

Claimant pled the following activities regarding section 87610.1:

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 (§ 87610.1, subd. (a)).

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 (§ 87610.1, subd. (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 (§ 87610.1, subd. (b)).

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 (§ 87610.1, subd. (d)).

The claimant also requests reimbursement based on section 87611 for "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."

The Chancellor's Office March 2004 comments state that subdivision (a) requires the faculty exclusive representatives, not districts, to consult with the academic senate prior to collective bargaining, and therefore "includes no directives to districts." The Chancellor's Office also states:

Subdivision (b) provides an optional mechanism for addressing decisions to discontinue the service of probationary faculty. Prior to the addition of section 87610.1, districts were required to follow section 87740 when they decided to terminate the probationary period of new faculty members. . . . Section 87610.1 represents an alternative to the provisions of section 87740. Districts are never required to proceed under section 87610.1. As the section indicates "If there is no contractual grievance procedure resulting in arbitration, these allegations [to challenge a decision not to continue a probationary faculty member] shall proceed to hearing in accordance with Section 87740." If districts choose to collectively bargain a grievance procedure that results in arbitration, section 87610.1 applies; otherwise, districts continue to follow section 87740. Because the decision to come under section 87610.1 is voluntary, the provisions of section 87610.1 cannot be the basis of a claim. (Emphasis in original.)

The Chancellor's Office also states the following regarding the remedies an arbitrator may impose in subdivision (d) of section 87610.1:

If the District improperly attempts to end the employment of a probationary employee, it will be responsible for making the employee whole, including back pay and benefits in the proper case. . . . Nothing mandates that Claimant take improper action against an employee, so the State is not responsible for the Claimant's conduct in this regard.

In addition, the Chancellor's Office comments on section 87611's limited judicial review of an administrative decision under section 1094.5 of the Code of Civil Procedure, which focuses on whether or not the administrative body acted within its jurisdiction, whether there was a fair trial, or whether there was an abuse of discretion in the administrative agency's findings or conclusion. According to the Chancellor's Office, a claimant is not required to proceed under section 87610.1, and section 87611 makes no mention of any costs. Rather, it "merely indicates that arbitration decisions regarding the release of a probationary faculty member can be judicially reviewed pursuant to section 1094.5 of the Code of Civil Procedure." The Chancellor's Office also points out that "judicial review under section 1094.5 has long been

available for review of community college decisions concerning probationary employees,” citing *Steward v. San Mateo Junior Collect Dist. et al.* (1974) 37 Cal.App.3d 345.

According to claimant’s rebuttal comments, there are a new group of allegations in subdivision (b) of section 87610.1 that are now required to be procedurally addressed as grievances. These allegations are 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.” Also, “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.”

Staff finds that section 87610.1 and any resulting litigation following arbitration pursuant to section 87611 do not impose state-mandated duties on community college districts. The alternative arbitration procedures provided by sections 87610.1 and 87611 only apply to “those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code [the Educational Employment Relations Act, or “EERA”]. . . .” (§ 87610.1, subd. (a).) Section 87610.1 also provides for the original hearing alternative, which has been in place since at least 1965: “If there is no contractual grievance procedure resulting in arbitration, these allegations shall proceed to hearing in accordance with Section 87740.” (§ 87610.1, subd. (b), and former §§ 13343, 13346.25, and 13346.32.)

Courts have construed the term “mandate” according to its commonly understood meaning as an “order” or “command.”⁶⁶ Government Code section 17514 defines “[c]osts mandated by the state” to mean “any increased costs which a local agency or school district is *required* to incur. . . .” (emphasis added).⁶⁷ This narrow construction of “mandate” is consistent with the analysis adopted by the court in *City of Merced v. State of California*.⁶⁸ In that case, the City of Merced sought reimbursement from the state for costs incurred as a result of a statutory requirement that when a city or county chooses to exercise its power of eminent domain it must compensate for business goodwill. The court rejected the City’s argument that business goodwill compensation amounted to a reimbursable state mandate, finding that “the Legislature intended for payment of goodwill to be discretionary.”⁶⁹ The court proceeded to clarify its conclusion by reasoning that:

[W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. *The fundamental concept is that the city or county is not required to exercise eminent domain.* If,

⁶⁶ See *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d 155, 174 (stating that “[w]e understand the use of ‘mandates’ in the ordinary sense of ‘orders’ or ‘commands’”).

⁶⁷ Government Code section 17514.

⁶⁸ *City of Merced v. State of California (City of Merced)* (1984) 153 Cal.App.3d 777.

⁶⁹ *Id.* at page 783.

however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost. (Emphasis added.)

City of Merced has been followed and interpreted by the California Supreme Court to stand for the proposition that activities pursued voluntarily at the discretion of a local government entity, without any legal compulsion to do so, “do not trigger a state mandate and hence do not require reimbursement of funds.”⁷⁰ In *Kern High School District*, the California Supreme Court analogized the analysis of *City of Merced* to the facts before it, stating:

... if a school district elects to participate in or continue participation in any underlying *voluntary* education-related program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)⁷¹

The California Supreme Court has stated, “The proper focus under a legal compulsion inquiry is upon the nature of the claimants’ participation in the underlying programs themselves.”⁷² This means the focus is on the local government’s initial decision to participate in the underlying program. Accordingly, where decision-making authority is reserved to a local government that chooses to participate in a voluntary underlying program, the Legislature may issue guidelines directing the entity’s consequent conduct concerning that program. Any resulting “downstream” requirements with which the local government must comply are not reimbursable state mandates. This is consistent with the decisions in *City of Merced* and *Kern High School District*.⁷³

Section 87610.1 provides an alternative arbitration procedure for processing a probationary employee’s challenge to a district’s decision not to grant tenure or reappoint the employee. Before the enactment of section 87610.1, an affected employee could proceed according to the procedures outlined in section 87740 by requesting that a hearing be held to determine whether there was cause for denying tenure or reappointment.

With the enactment of section 87610.1, the hearing recourse in section 87740 is left intact for employees in districts without collective bargaining provisions. But an employee challenging that same decision of the district will have recourse pursuant to the terms of a collective bargaining agreement, *if* a collective bargaining agreement is in place in that district and provides for arbitration of grievances. The issue is whether the collective bargaining route imposes a state-mandated activity.

In the context of collective bargaining, the EERA imposes on a community college district the obligation “to meet and negotiate” in good faith with the exclusive representative of a faculty

⁷⁰ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742.

⁷¹ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

⁷² *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 743.

⁷³ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

bargaining unit “upon request with regard to matters within the scope of representation.”⁷⁴ Falling within this scope are, “procedures for processing grievances” culminating in arbitration.⁷⁵

Section 87610.1, subdivision (b), provides that, in districts where a collective bargaining agreement is in place, allegations that a community college district wrongfully denied tenure or reappointment to a probationary employee “shall be classified and procedurally addressed as grievances.”⁷⁶ The EERA recognizes the right of employees to file grievances,⁷⁷ and grievance procedures are within the scope of representation under the EERA,⁷⁸ resulting in a duty on the community college district to “meet and negotiate” over such procedures.⁷⁹ While there is a requirement under the EERA that the district exercise good faith in negotiating with the employee organization’s exclusive representative, there is no requirement for the district to ultimately reach agreement with the exclusive representative. Any agreement reached pursuant to negotiations between a community college district and an employee organization’s exclusive representative must be entered into voluntarily.

Thus, a community college district is not legally required to agree to participate in any programs or procedures entered into as a result of its obligation to engage in the collective bargaining process. A community college district and an employee organization *may* agree to certain procedures for processing grievances, and the parties *may* agree that such procedures should culminate in arbitration. However, the parties at the bargaining table are not required to provide for such procedures at all. The district’s decision to enter into an agreement containing a grievance arbitration clause triggers the potential costs incurred by the district under the test claim statutes. Thus, as the term “mandate” has been narrowly construed by the courts, it follows that the costs incurred by a community college district to process tenure or reappointment denial grievances under section 87610.1 and to participate in the litigation of grievances post arbitration pursuant to section 87611 are not mandated by the state.

And there is no evidence that the community college district faces practical compulsion to comply with sections 87610.1 and 87611. The California Supreme Court described practical compulsion as “for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program...”⁸⁰ There is nothing in the record or in the statutes that demonstrate a substantial penalty for failure

⁷⁴ Government Code section 3543.3; see Government Code section 3543.5, subdivision (c) (declaring it to be unlawful for a public school employer to “[r]efuse to meet or negotiate in good faith with an exclusive representative”).

⁷⁵ Government Code section 3543.2, subdivision (a).

⁷⁶ Education Code section 87610.1, subdivision (b).

⁷⁷ Government Code section 3543, subdivision (b).

⁷⁸ Government Code section 3543.2, subdivision (a).

⁷⁹ Government Code section 3543.3.

⁸⁰ *Kern High School Dist.*, *supra*, 30 Cal. 4th 727, 731.

to adopt the arbitration process in section 87610.1 for tenure grievances. Thus, community colleges are not practically compelled to comply with sections 87610.1 and 87611.

Moreover, judicial review under writ of mandate was available for grievances or tenure hearings prior to the enactment of section 87611 (Stats. 1988, ch. 973).⁸¹ Thus, district participation in judicial proceedings is not a new program or higher level of service.

Claimant also pled the activity of “complying with the arbitrator’s make-whole remedies” pursuant to subdivision (d) of section 87610.1. Staff finds that compliance with the remedies determined by the arbitrator is not a state mandate because the remedies would come from the arbitrator rather than the state. Moreover, the community college chose to be subject to the arbitrator under the section 87610.1 process in the first place.

In the absence of either legal or practical compulsion to use the arbitration process in section 87610.1, staff finds that sections 87610.1 and 87611 (Stats. 1988, ch. 973, Stats. 2000, ch. 124) do not impose a state-mandated new program or higher level of service under article XIII B, section 6.

3. The Notice and Hearing Procedures in section 87740 (as amended in 1995) do not Mandate a New Program or Higher Level of Service

As indicated above, if there is no contractual grievance procedure resulting in arbitration, tenure grievance allegations shall proceed to a hearing in accordance with section 87740 before an administrative law judge. Section 87740 describes notice and hearing procedures for community college districts “before an employee is given notice that his or her services will not be required for the ensuing year.”

Claimant pled section 87740 as amended by Statutes 1995, chapter 758, for the following activities:

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:

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.

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.

⁸¹ In *McGuire v. Governing Board*, *supra*, 161 Cal.App.3d 871, a temporary employee sued for tenure using a writ of mandate, but the court denied tenure, holding that his tutorial duties did not rise to the level of classroom teaching. In *Steward v. San Mateo Junior Collect Dist. et al.* (1974) 37 Cal.App.3d 345, the court upheld a lower court mandamus proceeding finding that the dismissal of a probationary junior college teacher was invalid.

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. (§ 87740, subd. (c).)

The Chancellor's Office argues that section 87740's procedures have been required (as former section 13443) since 1965, and are therefore not subject to reimbursement under article XIII B, section 6.

Claimant's rebuttal comments assert that a section 87740 hearing is now triggered by section 87610.1, subdivision (b), the tenure grievance procedure discussed above, for denying tenure or reappointing probationary employees and is therefore reimbursable.

Staff finds that section 87740, as amended by Statutes 1995, chapter 758, does not mandate a new program or higher level of service.

Section 87740, as amended by Statutes 1995, chapter 758, made only technical, nonsubstantive changes. For example, it added to subdivision (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 ..." In subdivision (b), the word "must" was twice replaced by the word "shall" as follows: "A request for hearing shall be in writing and shall be delivered to the person who sent the notice ..." In subdivision (c)(1), the word "in" was removed as follows: "... he or she shall be notified of this five-day period for filing ~~in~~ the accusation." In subdivision (c)(3), the word "schools" was replaced by the word "colleges" and edited the last sentence as follows: "The board may adopt, from time to time, ~~such~~ rules and procedures not inconsistent with ~~the provisions of this section that~~ may be necessary to effectuate this section. In subdivision (d), the words "school" and "schools" were replaced with the words "college" and "colleges."

Subdivision (f) was amended as follows:

If a governing board notifies a contract employee that his or her services will not be required for the ensuing year, the board ~~shall~~, 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 ~~school~~ college year.

In subdivision (h), "In the event that" was changed to "if" and in subdivision (i) "which" was changed to "that."

Thus, because section 87740 (Stats. 1995, ch. 758) is substantively identical to the prior versions of that section (Stats. 1985, ch. 324, Stats. 1976, ch. 1010), and has, since 1965, allowed contract employees to request administrative hearings to challenge district tenure and contract decisions,

it imposes no new activities on community college districts. Staff finds that section 87740, as amended in 1995, does not impose a state-mandated new program or higher level of service.

D. Faculty Service Areas

Claimant pled sections 87743.2, 87743.3, 87743.3, and 87743.5, as added by Statutes 1988, chapter 973. These sections require community college districts to establish "faculty service areas" by July 1, 1990 (§ 87743.2). A faculty service area (FSA) is "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." (§ 87743.1.)

As a preliminary matter, section 70, subdivision (d), of the 1988 statute states that "Sections 51 to 56" of the bill shall be implemented and "be mandatory" only if the state board of governors certifies that adequate funding has been provided. The faculty service area statutes were added by sections 52 through 56 and, thus, they are subject to the condition identified in section 70.

At its September 1989 meeting, the state board of governors certified that adequate funding had been provided and, thus, community college districts were required to implement sections 87743.2, 87743.3, 87743.3, and 87743.5 as of that date.⁸² The analysis continues to determine which activities impose a state-mandated new program or higher level of service on community college districts.

1. Establish FSAs and competency criteria for faculty members

Establishing FSAs is within the scope of negotiation under the Educational Employment Relations Act (EERA), and the exclusive representative is required to consult with the academic senate in developing its proposals. (§ 87743.2.) Districts are also required to establish competency criteria for faculty members in order to determine competency to serve in an FSA by July 1, 1990, with the development, meeting and negotiating to take place according to the EERA. (§ 87743.5.)

Claimant pled the following activities:

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. (§ 87743.2.)

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. (§ 87743.5.)

The Chancellor's Office states that there is no express updating requirement in section 87743.2, only that the FSAs be established by July 1, 1990.

Staff finds that the plain language of sections 87743.2 and 87743.5 (Stats. 1988, ch. 973) impose the following new requirements on community college districts, which constitute state mandates:

⁸² Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.

- Not later than July 1, 1990, each community college district shall establish faculty service areas. The establishment of faculty service areas is subject to the collective bargaining process in Government Code section 3543.2. (§ 87743.2.)
- Not later than July 1, 1990, each community college shall establish competency criteria for faculty members employed by the district. The establishment of competency criteria for faculty members is subject to the collective bargaining process in Government Code section 3543. (§ 87743.5.)

Staff also finds that sections 87743.2 and 87743.5, as added by Statutes 1988, chapter 973, mandate a new program or higher level of service, since they were not required under prior law.

2. Qualifying for FSAs

Under section 87743.3, each faculty member is required to qualify for one or more FSAs at the time of initial employment, and may apply for more FSAs if he or she is qualified. Any disputes due to denial of FSA applications are treated as grievances. Section 87743.3 states the following:

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 [reduction in the number of employees due to declined average daily attendance] 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.

Claimant pled the following activities:

Receiving and determining faculty applications to add faculty service areas for which the faculty member qualifies.

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. (§ 87743.3.)

Staff finds, based on the plain language of the statute, that section 87743.3 (Stats. 1988, ch. 973) imposes a state mandate on community college districts to receive faculty service area applications from faculty members and determine whether a faculty member qualifies for one or more faculty service areas at the time of initial employment, and whether the faculty member qualifies for additional faculty service areas to which he or she may apply. Staff also finds that

this activity is a new program or higher level of service because it was not required before Statutes 1988, chapter 973 was enacted.

The last two sentences of section 87743.3 state:

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 dispute shall be developed by the academic senate and representatives of the governing board.

Staff finds that, based on its plain language, section 87743.3 (Stats. 1988, ch. 973) imposes a state-mandated new program or higher level of service on community college districts to procedurally address as a grievance, or to use fair and equitable procedures for resolution of, any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area.

3. Maintain FSA records

Districts are also required to maintain permanent records of faculty members' FSAs in the faculty members' personnel files as follows:

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 the district competency standards. The records shall be contained in the faculty member's personnel file. (§ 87743.4.)

Claimant pled the following:

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. (§ 87743.4.)

Staff finds that, based on the plain language of section 87743.4 (Stats. 1988, ch. 973), it is a state mandate for districts to maintain a permanent record for each faculty member employed by the district, in his or her personnel file, 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. This is also a new program or higher level of service, since it was not required under prior law.

As discussed above, because they are voluntary programs, community college districts are *not* entitled to reimbursement for any FSA activities for faculty or educational administrators employed the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), and Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.).

Issue 2: Do the test claim statutes and regulations impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556?

The final issue is whether the test claim statutes and regulations impose costs mandated by the state,⁸³ and whether any statutory exceptions listed in Government Code section 17556 apply to the claim. Government Code section 17514 defines “cost mandated by the state” as follows:

[A]ny 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.

Government Code section 17564 requires that claims exceed \$1000 to be eligible for reimbursement.

The test claim includes declarations that claimant will incur costs estimated to exceed \$1000 to implement the test claim statutes and regulations. (Exhibit 1 to test claim, page 12.)

A. Activities Required by Phase I of the 1988 Reform Act (Phase I of Transitional Program Improvement) to be Completed by July 1, 1990 do not Impose Costs Mandated by the State

The following mandated activities were required to be completed by July 1, 1990:

- Develop hiring criteria for faculty and administrators that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students. (§ 87360, subd. (a).)
- Develop hiring criteria, policies, and procedures for new faculty members that are developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board. (§ 87360, subd. (b).)
- Establish faculty service areas, subject to the collective bargaining process in Government Code section 3543.2. (§ 87743.2.)
- Establish competency criteria for faculty members employed by the district, subject to the collective bargaining process in Government Code section 3543. (§ 87743.5.)

The period of reimbursement for this claim begins July 1, 2001, eleven years after these activities were required to be completed.⁸⁴ There is no evidence in the record that the claimant or any community college district incurred costs for these activities during the period of reimbursement.

Moreover, pursuant to the plain language of the statutes, these activities are one-time activities. Based on certification by the board of governors, these activities have been “adequately funded.”

⁸³ *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

⁸⁴ The test claim was filed June 13, 2003, so reimbursement is only available starting in the 2001-2002 fiscal year pursuant to Government Code section 17557, subdivision (e).

Section 70, subdivision (d), of the 1988 test claim statute placed these activities within Phase I of the program and required that these activities be implemented only upon certification by the board of governors that adequate funding has been provided. "Adequate funding" is defined as "those moneys required to provide an increased quality of instruction and programs, and to carry out applicable mandates of this act, within the California Community Colleges." Section 70, subdivision (d), further states that "[b]ased on 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)." At its September 1989 meeting, the board of governors certified that adequate funding has been provided to community college districts for completion of these one-time activities.⁸⁵

Accordingly, staff finds that the activities required by sections 87360, 87743.2, and 87743.5 do not impose increased costs mandated by the state within the meaning of Government Code section 17514.

B. The Remaining Activities Do Not Impose Costs Mandated by the State

The remaining activities mandated by the state require community college districts to:

1. Determine the minimum qualifications of applicants for faculty and educational administrator positions as follows (§ 87359, subd. (a), as added by Stats. 1988, ch. 973; Cal. Code Regs., tit. 5, § 53430, subd. (a).):
 - Determine that an applicant for a faculty or educational administrator position possesses qualifications that are at least equivalent to the minimum qualifications identified in sections 53406, 53407, 53410, 53410.1, 53415, 53416, 53417, and 53420 as applicable, before an action is taken to employ the individual.
 - The criteria used in making the employment determination of faculty and educational administrators shall be reflected in the district's action. (§ 53430, subd. (a).)

Community college districts are *not* entitled to reimbursement for these activities above when employing faculty or educational administrators in the following programs and courses: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.), and noncredit courses (Cal. Code Regs., tit. 5, § 53412).

2. Develop Process, Criteria, and Standards for Determinations on Faculty (§ 87359, subd. (b), Stats. 1988, ch. 973; Stats. 1993, ch. 506; Cal. Code Regs., tit. 5, § 53430, subds. (b) & (c).):
 - The process, criteria, standards, and policies and procedures for reaching determinations regarding the employment of faculty whose qualifications are equivalent to the minimum qualifications shall be developed and agreed upon jointly

⁸⁵ Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.

by representatives of the governing board and the academic senate. (§ 87359, subd. (a); Cal. Code Regs, tit. 5, § 53430, subd. (b).)

- The agreed upon process for hiring faculty 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 possess qualifications that are at least equivalent to the applicable minimum qualifications specified in the regulations. (§ 87359, subd. (a), Cal. Code Regs, tit. 5, § 53430, subd. (b).)
- The process for hiring faculty 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 section 87358. (§ 87359, subd. (a), Cal. Code Regs, tit. 5, § 53430, subd. (c).)
- The governing board shall approve the process, criteria, standards, and policies and procedures for reaching determinations regarding the employment of faculty and administrators. (§ 87359, subd. (a); Cal. Code Regs, tit. 5, § 53430, subd. (b).)

Community college districts are *not* entitled to reimbursement for these activities above when employing faculty or administrators in the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), and Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.).

3. Faculty Evaluations:

- Evaluate a temporary employee within the first year of employment, and at least once every six regular semester or once every nine regular quarters thereafter. (§ 87663 subd. (a), Stats. 1988, ch. 973, Stats. 1990, ch. 1302.)
- Include a peer review process in evaluations of academic employees, on a departmental or divisional basis, that addresses 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. (§ 87663, subds. (c) and (d), Stats. 1988, ch. 973, Stats. 1990, ch. 1302.)
- Develop “evaluation procedures locally defined through the collective bargaining process where the faculty has chosen to elect an exclusive representative” for probationary faculty. (§ 87663, subd. (h).)
- Establish and disseminate written evaluation procedures for administrators (§ 87663, subd. (i), Stats. 1988, ch. 973, Stats. 1990, ch. 1302).
- Adopt and cause to be printed and made available to each academic employee of the district amended rules and regulations that reflect the new requirements imposed by Education Code section 87663 (Stats. 1988, ch. 973, Stats. 1990, ch. 1302) and

provide for the evaluation of the performance of academic employees in their assigned duties. This is a one-time activity. (Cal. Code Regs., tit. 5, § 53150.)⁸⁶

Community college districts are *not* entitled to reimbursement for these evaluations activities above when employing faculty or educational administrators in the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414), and Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.).

4. Faculty Service Areas:

- Receive faculty service area applications from faculty members and determine whether a faculty member qualifies for one or more faculty service areas at the time of initial employment, and whether the faculty member qualifies for additional faculty service areas to which he or she may apply. (§ 87743.3, Stats. 1988, ch. 973.)
- Procedurally address as a grievance, or use fair and equitable procedures for resolution of, any dispute arising from an allegation that a faculty member has been improperly denied a faculty service area. (§ 87743.3, Stats. 1988, ch. 973.)
- Maintain a permanent record for each faculty member employed by the district, in his or her personnel file, of each faculty service area for which the faculty member possess the minimum qualifications for service and in which he or she has established competency pursuant to district competency standards. (§ 87743.4, Stats. 1988, ch. 973.)

Community college districts are *not* entitled to reimbursement for these FSA activities above when employing faculty or educational administrators in the following programs: Disabled Students Programs and Services (§§ 67300 et seq., Cal. Code Regs., tit. 5, §§ 56000 et seq. and 53414) and Extended Opportunity Programs and Services (§§ 69640 et seq., Cal. Code Regs., tit. 5, §§ 56200 et seq.).

The next question is whether funding in an amount sufficient to fund the costs of these mandated activities has been provided to community college districts. If so, the activities would not impose costs mandated by the state within the meaning of Government Code sections 17514 and 17556. Government Code section 17556, subdivision (e), provides that the Commission shall not find costs mandated by the state if:

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that 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.

⁸⁶ California Code of Regulations, title 5, section 53130, Register 91, No. 23 (June 7, 1991). A new article heading was added by Register 93, No. 25 (June 18, 1993). Editorial correction of the history was made by Register 95, No. 19 (March 19, 1995).

The 1988 Reform Act included the following legislative intent regarding funding its reforms:

The Legislature finds and declares that the reforms enacted through this act form a mutually dependent and related set of provisions. While some few provisions could be enacted independently, other sections of this act depend upon adequate support for the programs of the community colleges. There is a direct linkage between those sections of this act which constitute the further professionalization of the faculty and the moneys required to enhance the programs of the community colleges for "transitional program improvement," as specified in Section 84755 of the Education Code.

For instance, the elimination of credentials must be accompanied by the establishment of minimum qualifications by the board of governors. Minimum qualifications in turn must be implemented by districts through the establishment of faculty service areas, competency criteria, and various waiver processes. The extension of the tenure probationary period to four years as well as the revisions to layoff procedures also depend upon faculty service areas and competency criteria. Similarly, because so many of the reforms call for faculty involvement in the determination and implementation of policy, and because the quality, quantity, and composition of full-time faculty have the most immediate and direct impact on the quality of instruction, overall reform cannot succeed without sufficient members of full-time faculty with sufficient opportunities for continued staff development, and with sufficient opportunity for participation in institutional governance.

The Legislature further finds that, absent resources to reimburse the state-mandated costs of this act, new full-time faculty to replace part-time faculty, and expanded programs for staff development, the viability or success, or both, of many of the reforms in this act will be jeopardized. The Legislature recognizes that due to unanticipated fiscal conditions the State cannot immediately fund all of the reforms contained in this act. The Legislature also recognizes, however, that if minimal funding is not soon provided that it would be inappropriate to proceed with many reforms.⁸⁷

The 1988 Reform Act also added section 84755, as mentioned in the first paragraph of the legislative intent language quoted above. Section 84755 provides funding guidance for the minimum qualifications, evaluation, and faculty service area mandates imposed on community college districts. It reads in part:

(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

⁸⁷ Statutes 1988, chapter 973, section 70, subdivision (a).

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 [originally: generated in the 1987-88 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:

[¶]... [¶]

(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.

[¶]... [¶]

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). (Emphasis added.)

Because program-based funding was not to be implemented until fiscal year 1991-1992,⁸⁸ the Legislature intended that program-improvement funding for the 1988 Reform Act be implemented in two phases of “transitional program improvement.”⁸⁹ Phase I includes the

⁸⁸ Education Code Section 84755, subdivision (a).

⁸⁹ Statutes 1988, chapter 973, section 70, subdivision (b).

remaining mandated activities bulleted above. The Legislature stated its intent “that moneys appropriated during Phase I fully fund any state-mandates created pursuant to this section” and required each community college district to use its allocation to initially reimburse state-mandated local program costs.⁹⁰ After the districts used the funds to reimburse the costs of the new state mandates, the districts had authority to use the program improvement allocations as they saw fit to pay for the program.

The certification that the districts had received adequate Phase I funding was adopted by the board of governors at its September 14-15, 1989 meeting.⁹¹ Thus, the costs of the state-mandated activities were fully funded with the program improvement funding until fiscal year 1991-1992. The reimbursement period for this claim, however, begins in fiscal year 2001-2002.

After program improvement funding ended in fiscal year 1991-1992, funding for the mandated activities was appropriated through program-based funding.⁹² (§ 84755, subd. (a).) Subdivision (d) of section 84755 states that each district governing board was to submit a “plan for using the resources allocated pursuant to this section” which the board of governors was to review and approve. Subdivision (d) further states: “[t]o 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.*” (Emphasis added.) Thus, by law the district’s plan for using funds appropriated for its base budget must be consistent with section 84755, subdivision (b), including the requirement for districts to first use their allocations to specifically fund the costs of the following mandated activities:

- Applying minimum qualifications to all newly hired faculty and administrators including candidates for these positions as required by Section 87356 (§ 84755, subd. (b)(2));
- Developing and administering a process for waiver of minimum qualifications as required by Section 87359 (§ 84755, subd. (b)(3));
- Establishing and applying faculty service areas and competency criteria as required by Sections 87743 to 87743.5, inclusive (§ 84755, subd. (b)(5)); and
- Evaluating temporary employees, instituting peer review evaluation, and widely distributing evaluation procedures as required by Section 87663. (§ 84755, subd. (b)(6).)

The base funding for community college districts has been appropriated in line item 6870-101-0001 of the state budget acts.

The Chancellor’s Office, in its comments on the test claim, asserts that this program was funded originally, as stated in the legislative intent language above, and was built into the base for the community college districts.

⁹⁰ Statutes 1988, chapter 973, section 70, subdivision (b)(1).

⁹¹ Board of Governors, California Community Colleges, AB 1725: Board Certification Necessary to Trigger Phase I of Reform. (Agenda Item 11) September 14-15, 1989.

⁹² Program-based funding was superseded by Statutes 2006, chapter 631.

Claimant disagrees that funding has been adequate and asserts that section 87455, subdivision (b), states that 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," but only after the amount is "increased or decreased to provide for equalization." According to claimant, this effectively negates any concept of cost reimbursement, which is the actual cost of the increased level of reimbursement.

Claimant also states that offsetting revenues in the 1988 Reform Act (Stats. 1988, ch. 973) did not provide for offsetting savings to local agencies or school districts which result in no net costs ... or include additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund it, in accordance with Government Code section 17556, subdivision (e). According to claimant, later provided funding is a question of fact subject to the Commission's determination. Claimant states that any revenue received by the districts are merely offsets and do not preclude reimbursement.

Staff finds that the remaining test claim statutes and regulations found above to be a state-mandated new program or higher level of service do not impose costs mandated by the state. During the period of reimbursement, funding has been appropriated for the costs of the mandated activities through the base funding in the budget acts, and pursuant to section 84755, subdivisions (b) and (d). That funding must first be used to pay for the mandated activities here. Thus, pursuant to Government Code section 17556, subdivision (e), revenue has been appropriated that was specifically intended to fund the costs of the state mandate.

The claimant has alleged costs of over \$1000 (exhibit 1 to test claim, page 12) to implement the mandated new program or higher level of service and argues that funding has not been sufficient. However, there is no evidence in the record that the claimant's base funding, which by law must first be used to pay for the mandated activities here, is not sufficient to fully cover its costs.

Moreover, Claimant's argument with regard to average daily attendance is not relevant because subdivision (b) of section 84755 only applies to allocating program improvement revenue, which ended in fiscal year 1991-1992 when program-based funding replaced it.

Even though funding is now based on full time equivalent students (§ 84750.5) the priorities in section 84755, including paying the costs of specified state mandates first, were built into the districts' base budgets according to subdivision (d) of section 84755.

Thus, there is no evidence that the claimant has incurred actual increased costs mandated by the state pursuant to Government Code section 17514⁹³ because funding or other appropriations (in this case, the district's base budget) exist in a form "specifically intended to fund the mandate" and appears are "sufficient to fund the cost of the state mandate." (Gov. Code, § 17556, subd. (e).)

III. CONCLUSION

⁹³ *Kern School Dist.*, *supra*, 30 Cal.4th 727, 747, fn. 16.

For the foregoing reasons, staff finds that the test claim statutes and regulations do not impose a reimbursable state mandate on community college districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code sections 17514 or 17556.

Recommendation

Staff recommends that the Commission adopt this analysis to deny the test claim.

Commission on State Mandates

Original List Date: 6/26/2003
Last Updated: 6/6/2011
List Print Date: 06/06/2011
Claim Number: 02-TC-27
Issue: Employment of College Faculty and Administrators

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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June 23, 2011

Drew Bohan, Executive Director
Commission on State Mandates
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Re: CSM. 02-TC-27
Test Claim of Santa Monica Community College District
Employment of College Faculty and Administrators

Dear Mr. Bohan:

I have received the Commission's Draft Staff Analysis (DSA) for the above referenced test claim dated June 3, 2011, to which I respond on behalf of the test claimant.

This response will first address procedural and threshold legal issues, then respond to exceptions to the analysis of each program's mandated activities. Issues raised by the DSA, but not responded to by this letter, are not waived.

PART 1. SPECIFIC SUFFICIENT ADDITIONAL REVENUE Government Code Section 17556, subdivision (e)

The DSA concludes that several code and regulation sections require activities by community college districts that are new programs or higher levels of service subject to reimbursement. However, none of these activities are proposed for reimbursement because the DSA (69) has concluded that the Legislature has provided 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 which is an exception to a finding of "costs mandated by the state" pursuant to Government Code Section 17556, subdivision (e).

A. Source of the Revenue

This is a legal threshold issue. A source of additional revenue is identified for the purpose of funding the new programs. The legislation (Education Code Section 84755, as added by Statutes of 1988, Chapter 973, Section 21.7) recognizes new state mandates that require state reimbursement, provides an initial funding source, and assigns the first use of that "program-based funding" to fund the new mandates that are the subject of this test claim.¹ In Section 70 (an uncodified section) of Statutes of

¹ Education Code Section 84755, as added by Statutes of 1988, Chapter 973, 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 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).

(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

1988, Chapter 973, "[b]ased on estimates provided . . . , 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) [for Phase I]." Section 70 states that Phase II money is intended to "fully fund" any state mandate created. For subsequent years, the DSA (68) asserts, but without foundation, that sufficient funds are appropriated by State Budget Act line item 6870-101-001.

Therefore, the condition of Section 17556, subdivision (e), that requires "additional revenue" that is "specifically intended to fund the costs of the mandates" *appears* to have been addressed for the initial periods by the mandate legislation and for subsequent periods by the Budget Acts. What remains then is the factual determination of whether the additional revenue appropriated initially and every year since the effective date of the new programs is "in an amount sufficient to fund the cost of the state mandate."

B. Board of Governors Certification

The Board of Governors certifications alone are factually and legally insufficient for purposes of a Commission finding for Government Code Section 17556, subdivision (e). Neither the Legislature nor the Board of Governors has any quasi-judicial authority for mandate determinations. Only the Commission can make findings of law and fact for test claims and cannot rely upon legislative disclaimers or delegate the adjudication of the test claim to other state agencies. As a matter of law, the Commission cannot rely upon the two initial funding certifications of the Board of Governors without an independent evaluation of the factual basis for the certifications sufficient for the Commission to make an independent determination. There is no provision in the Government Code for the Commission to delegate this function to another state agency.

Other than that board agenda action item, there is no information in the DSA record supporting the ultimate conclusion of the Board of Governors that the funding was sufficient. As required by the legislation, the Board of Governors certified in September 1989 that the Phase I money was adequate, and similarly certified Phase II in November 1990. Based on these certifications, the DSA (68) concludes as a matter of law that "the costs of the state mandated activities were fully funded with the program improvement funding until fiscal year 1991-92." The test claimant is informed and believes that the Chancellor of the California Community Colleges on or about 1991

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."

prepared an "AB 1725" cost questionnaire to obtain from each community college an estimate of 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 evaluated by the Commission in order to make an independent determination as to whether the funding was sufficient to fund all the direct and indirect costs of the mandate.

Regardless, the factual utility of these certifications is of course a question of fact. Neither the Legislature nor the Board of Governors has the legal authority to determine which activities result in costs mandated by the state. That is within the exclusive jurisdiction of the Commission on State Mandates. The Commission will make that determination based on this test claim. Therefore, although the Board of Governors was aware of the new programs, they could not have been aware of which activities are reimbursable, so the AB 1725 estimates or spending plans provided by the districts and any conclusion made by the Board of Governors therefrom are speculation. Since the certifications are based on estimates there was no actual program cost information available for the time period of the AB 1725 survey. The AB 1725 district survey responses which were the basis of the Board of Governors conclusion on the sufficiency of the \$140 million are not a part of the record and there is nothing else in the DSA record that indicates that the actual costs of implementation have ever been determined then or since these estimates were received.

There have been no subsequent certifications, so there is no ostensible basis for the Commission to utilize for the proposition that the funds are sufficient in subsequent years. Instead, for subsequent years, the DSA accepts without evaluation a representation by the Chancellor's Office staff that the programs are funded by ongoing annual appropriation, but without a representation as to sufficiency. Note that the ongoing funding, to the extent it was actually provided (there is no foundation for any such conclusion) each subsequent year, was provided by *subsequent* budget act legislation, not the original mandate program legislation which only included funding (Section 70) for the initial years of implementation. So the sufficiency of the funding also remains a question of fact each year which alone also fails the conditions of Section 17556, subdivision (e).

C. Evidentiary Burden

There is no actual cost information on the record from which to make a determination of sufficiency. Regarding Phase I costs, the DSA (62) states that "[t]here is no evidence in the record" that any district incurred costs for these activities during the period of reimbursement. For the "remaining" program costs subsequent to Phase I, the DSA (69) states that "there is no evidence in the record that the claimant's base funding, . . . is not sufficient to fully cover its costs." This is circuitous and disingenuous reasoning. The DSA offers no evidence that the funding is sufficient which is necessary to operate

the provisions of Section 17556, subdivision (e), and then shifts the burden to the test claimant to disprove the proposition stated in the DSA. The test claim filing only required the test claimant to allege at least \$1,000 in annual costs. The test claimants have met that burden. The DSA cannot shift the burden to test claimants to prove or disprove a lack of evidence for an affirmative Section 17556 exception to reimbursement argument. It has been nine years since the test claim was accepted for filing and 22 years since the programs were implemented. The Commission has never requested this information from either the test claimant or the relevant state agency. The lack of evidence that is not required as part of the test claiming filing and was never requested is not a reasonable basis to make a finding of law that the program funding is sufficient. Regardless, the question of sufficiency need never be reached because the funding formula is legally defective.

D. Funding Formula

Notwithstanding the absence of the cost data, the colleges are not being funded based on actual program costs. Section 84755, subdivision (b), states that the new funds will be allocated to "each district on the basis of an amount per unit of average daily attendance funded in the prior fiscal year," but only after the amount is "increased or decreased to provide for equalization." The subsequent annual funding is allocated based on full time equivalent students, which is essentially the same mechanism as average daily attendance. These allocation methods effectively negate any concept of actual cost reimbursement, which is the actual cost of the new program or increased level of service (including indirect costs which are about an additional 30% to 35% of direct costs). The funding scenario bears no relationship to the actual cost of the mandate at any college district, so as a matter of law, it cannot be presumed to be sufficient, and as a matter of law, it cannot satisfy the requirements of Section 17556, subdivision (e), as reimbursement of costs.

E. Cost Reduction

The funding scenario, to the extent actually implemented, does not meet the Government Code section 17556, subdivision (e), exception to a finding of costs mandated by the state, since the statute did not provide for offsetting savings which result in no net costs, 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. On the other hand, to the extent that ongoing funding was appropriated, and continues to be made available each subsequent year, such funding will offset properly matched program activity costs, but this offset potential is factually and legally insufficient for Section 17556, subdivision (e). The application of the annual funding will properly be a reduction of activity costs reported in each district's annual claim. In the years that the funding actually is sufficient, districts will have no reimbursable annual claims. This a matter for the parameters and guidelines.

PART 2. NEW PROGRAM STANDARD OF REVIEW
Government Code Section 17514

The DSA (25) states that to determine if a program is new or imposes a higher level of service, the statutes pled "must be compared with the legal requirements in effect immediately before the enactment." This is incorrect. The test claim was filed June 13, 2003. These filings are effective prior to the September 30, 2003, effective date of Statutes of 2002, Chapter 1124 (for mandates that became effective before January 1, 2002)², which first established at Government Code Section 17551, subdivision (c), time limits for filing on statutes enacted after December 31, 1974. Based on the date these test claims were submitted, the standard of review is to compare the statutes pled on the effective date of the test claim filing (here July 1, 2001) to the status of the law as of December 31, 1974, pursuant to Government Code Section 17514. The DSA needs to be revised to compare the statutes and laws effective July 1, 2001, to the law as it existed on December 31, 1974.

PART 3. MINIMUM QUALIFICATIONS FOR FACULTY EMPLOYMENT

A. Board of Governors Consultation Process

Education Code Section 70901 Education Code Section 87356
Education Code Section 87357 Education Code Section 87358

Education Code Section 70901, subdivision (b) (1) (B), requires the Board of Governors to consult with college districts and other interested parties to establish minimum standards for the employment of academic and administrative staff in colleges. Further, Section 70901, subdivision (e), requires the governing board to "establish and carry out" the necessary consultation process. However, the DSA (28) concludes that the plain language of Section 70901 does not require the district to participate.

Education Code Section 87356, subdivision (a), requires the Board of Governors to adopt regulations to establish and maintain the minimum qualifications for faculty members. Section 87357, subdivision (a) (1), in order to implement Section 87356, requires the Board of Governors, to "consult with, and rely primarily on the advice and judgment" of enumerated statewide representative organizations comprised primarily of

² Statutes of 2002, Chapter 1124, is generally effective September 30, 2002. However, the amendment that added Government Code Section 17551, subdivision (c), delayed the effective date of that subdivision for mandates effective before January 1, 2002, by one year to September 30, 2003:

(c) Local agency and school district test claims shall be filed not later than three years following the date the mandate became effective, *or in the case of mandates that became effective before January 1, 2002*, the time limit shall be one year from the effective date of this subdivision. (Emphasis added)

college district faculty and staff. Further, the Board is required to appoint college staff that are members of statewide representative groups to conduct the three-year review requirement of Section 87357, subdivision (a) (2). The DSA (30) concludes that college district faculty are not required to participate as anything other than volunteers. Similarly, Education Code Section 87358 requires the Board of Governors to periodically designate a team of college district administrators and faculty to review a district's application of the minimum employment qualifications. The DSA (31) concludes that the plain language merely requires "designation" of a team, but that doesn't mandate participation, and that the designees may refuse.

More to the point is the college district's cost for faculty to participate, not the individual faculty member's choice to participate. Commission staff is referred to the Commission determination on Education Code Section 70902, subdivision (b) (14), that requires the district to participate in the consultation process established by the Board of Governors and Title 5, CCR, Section 53207, regarding faculty release time for these activities, which were the subject of the recently decided Minimum Conditions for State Aid (02-TC-25/31) test claim. It is the same consultation process here.

It would seem reasonable and necessary for the community college districts to actually participate in the process in order to implement the intended purposes of the statute and code sections. Education Code Section 70901, subdivision (a), directs the work of the Board of Governors to all times maintain, to the maximum degree permissible, local authority and control in the administration of the community colleges. For the college districts to not participate in the process would frustrate the stated purpose of the 1988 reform act which cannot be a reasonable construction of the meaning of the statute.

B. Evaluation of Qualifications

Education Code Section 87359 Title 5, CCR, Section 53430

Education Code Section 87359, subdivision (a), and Title 5, CCR, Section 53430, require the district to determine if specified applicants meet minimum qualifications. The DSA (33) concludes that this is an "affirmative duty" and a "new program or higher level of service (DSA 36)." However, the DSA (34) improperly excludes applicants for the EOPS and DSPS programs, because other test claims decisions have found that those programs are conditioned on the receipt of program funding, even though these positions and applicants are incorporated by reference by Section 87359, subdivision (a) (Title 5, CCR, Sections 53402 and 53414). The cited program language (DSA 34, 35) indicates that those program funds are for providing program services to the students (e.g., funding faculty positions), and not for the administrative process of evaluating faculty applicants for those positions, which is not mentioned in the program funding language.

For other reasons, the DSA (36 and 38) excludes from this new duty the instructors for noncredit courses, asserting that since 1983 (former section 52275), and perhaps as

early as 1970 (former section 52600), districts were required to "assess" the qualifications for instructors for "classes for adults" and that there is nothing in the record to indicate the Section 87359 process is a higher level of service. However, the DSA does not establish an uninterrupted requirement from Sections 52600, to 52275 and 52277, to 53412 (Register 90, No. 49). Nor is there anything in the staff analysis to indicate that it isn't a higher level of service, as is asserted to the contrary (DSA 38). Regardless, the DSA has not indicated that these noncredit courses were ever mandated programs. If DSPS and EOPS instructors are being excluded from the new mandate because those programs are not mandated, it is similarly inappropriate to exclude the instructors for noncredit courses based on a duty prior to Section 53412 for possibly nonmandated noncredit courses.

Education Code Section 87359, subdivision (b), requires the district governing board to consult with the district faculty senate in making its determination regarding faculty applicants, which the DSA (39) concludes is a state mandated requirement, except for the DSPS and EOPS faculty, but including the noncredit course faculty, because "there is no indication that" the latter noncredit course instructors "are excluded from the [subdivision (b)] process."

So, the DSA's contradictory treatment of instructors for nonmandated courses indicates the irrelevance of the reimbursement status of the underlying course to the mandate established by Section 87359, subdivision (a). This is not a *Kern* precursor optional program followed by a mandate conditioned on participating in the precursor program. The mandate at issue is limited to the evaluation of faculty and other staff applicants and is not contingent on the funding status of the courses to be instructed. The DSA inappropriately extends the perceived discretionary status of the courses to the scope of subsequent and independent mandate that is explicitly defined by incorporated regulations that enumerate the faculty and other positions to be included in the evaluation process

C. Faculty Evaluations

Education Code Section 87663 Title 5, CCR, Section 53130

The DSA (46) concludes that Education Code Section 87663, subdivisions (e) and (f), do not impose any state-mandated duties:

- "(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."

Faculty evaluation procedures are within the scope of matters that can be collectively bargained according to the Rodda Act (Government Code Section 3540, et seq.). Districts are required to collectively bargain and that mandate has been reimbursed for about 35 years. The Rodda Act process involves district employees operating within the scope of their compensated activities. Now, these employees are required by subdivision (f) to consult with members of the academic senate who are also operating within their compensated activities. The district incurs the payroll and related costs for these activities. Since the underlying collective bargaining process is an approved mandate, and subdivision (f) independently requires the consultation, it is a new program or higher level of service subject to reimbursement.

The DSA (48) concludes that Title 5, CCR, Section 53130 imposes the state-mandated duty for governing boards to establish and disseminate written evaluation procedures for contract and regular employees due to the amendments to Education Code Section 87663. However, the DSA (48) concludes that this is a one-time activity. This limitation ignores the fact that the evaluation process can be subsequently modified by the collective bargaining process or otherwise by district action or state law, and thus existing procedures would have to be modified and noticed to employees. This limitation also ignores the fact that district staff turnover requires new staff to be noticed even if the content of the process does not change. This is an ongoing mandate activity.

PART 4. TENURE GRIEVANCE ARBITRATION

Education Code Section 87610.1

Education Code Section 87611

Education Code Section 87740

Education Code Section 87610.1 provides a new process for arbitrating tenure and retention decisions as a grievance for those districts where tenure evaluation procedures are collectively bargained. Faculty tenure procedures are within the scope of matters that can be collectively bargained according to the Rodda Act. The grievance process as defined by the collective bargaining contract is specifically and currently reimbursable. Government Code Section 3540 states that collective bargaining requirements shall not supersede other provisions of the law that "establish and regulate tenure or a merit or civil service system, . . . so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements." This provision makes collectively bargained terms controlling over previous or other tenure procedures.

The DSA (56) concludes that while districts must negotiate, "there is no requirement for the district to ultimately reach agreement with the exclusive representative." Therefore, any agreement would be "entered into voluntarily" and that the district "is not legally required to agree to participate in any programs or procedures" that result for the districts "obligation to engage in the collective bargaining process." To characterize the district's duty to implement a collective bargaining contract as voluntary is to deny the

mandate for good faith bargaining and the binding effect of such agreements under contract law. Further, the grievance process is not voluntary, but it is a mandatory provision of the Rodda Act without any limitation on the scope of the subject matter of the grievance. Further, Government Code Section 3543, subdivision (b), includes the requirement that the grievance be "adjusted." Thus the legal requirement is for more than just a process, but includes a resolution. The grievance process from start to resolution is not voluntary.

Education Code Section 87740 provides for due process hearings when a probationary employee is not reemployed. Due process requirements were originally added in 1965 to former Education Code Section 13443. Section 13443 was recodified and renumbered as Section 87740 by Chapter 1010, Statutes of 1976, Section 2. The difference between the current and former versions of Section 87740 is not "how" the proceedings are conducted, but "when" they are conducted.

Both subdivisions (b) of former Section 13443 and Section 87740 allow an employee to request a hearing to determine if there is "cause" for not reemploying him or her for the ensuing year. Both subdivisions (d) of former Sections 13443 and 87740 require the determination not to reemploy a contract employee to be "for cause." Where the two sections differ is that Section 87740 is now also triggered by Education Code Section 87610.1 where, for the first time, subdivision (b) requires:

- (1) that 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, and,
- (2) that 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.

Therefore, Section 87740, as triggered by Section 87610.1 goes beyond the pre-1975 requirement that the determination was only to decide if there was "cause." As coupled with Section 87610.1, "cause" is now expanded and defined to include a standard of reasonableness and due process.

Education Code Section 87611 provides that 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 Procedures. Since these new requirements were mandated after 1975, they are "new" grounds for which a petition for writ of mandate may be granted, and could not have been mandatory subjects for judicial review prior to 1975. However, because the DSA

concludes that Section 87610.1 is discretionary, it did not reach the merits of Section 87611. The DSA should be corrected to recognize the new tenure grievance arbitration mandate and court action pursuant to the arbitrator's decision.

PART 5. FACULTY SERVICE AREAS

Education Code Section 87743.2

Education Code Section 87743.3

Education Code Section 87743.4

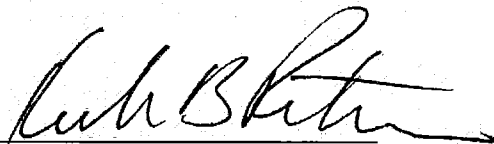
Education Code Section 87743.5

Pursuant to Education Code Section 87743, faculty service areas serve the purpose of determining staff retention priorities when there is a reduction in the number of permanent faculty. The DSA (59-61) concludes that Sections 87743.2 through 87743.5 require districts to establish faculty service areas, faculty competency criteria, respond to faculty qualification applications, treat appeals of those determinations as a grievance, and to maintain specific records. However, the DSA (61) improperly excludes from this mandate any such activities as they pertain to DSPS and EOPS faculty, because the Commission in other test claims has determined that these programs are voluntary. The cited language (DSA 34, 35) indicates that those program funds are for providing program services to the students (e.g., funding faculty positions), and not for the administrative process of evaluating of faculty eligibility for faculty service area placement, which is not stated in the program funding language. The mandate at issue here is limited to the evaluation of faculty service area placement and is not contingent on the funding status of the courses to be instructed. The DSA inappropriately extends the perceived discretionary status of these courses to the scope of a subsequent and independent mandate that is explicitly defined in Section 87743.2 et seq.

Certification

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that the attached documents, if any, are true and correct copies of documents received from or sent by the state agency which originated the document.

Executed on June 23, 2011 at Sacramento, California, by



Keith B. Petersen

C: Commission electronic service list

87 Cal.App.3d 441, 151 Cal.Rptr. 111
(Cite as: 87 Cal.App.3d 441)

C
BARRY ANDERSON, Plaintiff and Appellant,
v.
SAN MATEO COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents.

Civ. No. 41588.

Court of Appeal, First District, Division 2, California.
Dec. 19, 1978.

SUMMARY

A community college instructor sought by writ of mandate to compel a community college district and its governing board to reinstate him as an instructor. The college district had decided not to renew plaintiff's contract following his one-year probationary period after his teaching performance had been found to be deficient. Plaintiff alleged that his termination was improper because his evaluation had not been carried out in compliance with the rules and regulations for evaluating employees as set forth by the district and as required by Ed. Code, § 13346.15 (now § 87607). The trial court concluded that it lacked jurisdiction to review the decision of the college district and accordingly denied the petition for writ of mandate. (Superior Court of San Mateo County, No. 206515, Melvin E. Cohn, Judge).

The Court of Appeal reversed and remanded the case to the trial court for determination of whether plaintiff had been evaluated in accordance with the rules and regulations of the district and the Education Code. The court held that the trial court did have jurisdiction to review the decision of the district to the extent of determining whether the district had complied with its standards for evaluating the instructor. The court also held that the intent of the Legislature in enacting legislation dealing with the benefits and obligations of probationary community college teachers (Ed. Code, § 87600 et seq.) was to provide employment security for employees and to allow the district to remove unsatisfactory first-year teachers in a streamlined manner without a hearing. However, the court also held that the Legislature intended that the standards for evaluation of instructors be observed with care. (Opinion by Rouse, J., with Taylor, P. J.,

and Kane, J., concurring).

HEADNOTES

Classified to California Digest of Official Reports
(1a, 1b) Universities and Colleges §
8--Personnel--Contract Renewal-- Community Colleges--New Instructors.

The procedural protections governing contract renewal provided by Ed. Code, § 13346.15 (now § 87607), for certificated community college employees are judicially enforceable. Thus, a trial court had jurisdiction to review the decision of a community college district not to renew the contract of a probationary instructor, to the extent of determining whether the district had complied with its standards for evaluating the instructor.

[See **Cal.Jur.2d**, Universities and Colleges, § 36; **Am.Jur.2d**, Colleges and Universities, § 11.]

(2) Universities and Colleges §
8--Personnel--Community Colleges--Intent of Legislature--Benefits and Obligations of Probationary Teachers.

The intent of the Legislature in enacting legislation dealing with the benefits and obligations of probationary community college teachers (Ed. Code, § 87600 et seq.) was to strike a balance between the teacher's need for employment security and the school board's need for flexibility by providing increased employment security within two years for successful teachers, while the school board would be able to 'weed out' unsatisfactory first-year teachers in a streamlined manner without a hearing.

(3) Mandamus and Prohibition § 21--To Public Officers and Boards--Community College District--Employee Evaluation.

A probationary community college instructor facing dismissal had a legal right to have his performance evaluated in accordance with the college district's rules and regulations to insure that the conclusion that he was not competent to teach was based on accurate and articulable grounds; such right could be enforced by writ of mandate.

(4) Estoppel and Waiver § 10--Collateral Estoppel--Availability--Lack of Identity of Alleged Errors and Omissions.

The requirements for collateral estoppel are that

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the issue decided in the prior adjudication must be identical to the issue presented in the action currently being litigated; there must have been a final judgment on the merits of the previous action; and the party against whom the plea is asserted must have been a party or in privity with the party to the prior adjudicatory action. Thus, the doctrine of collateral estoppel was not available to a probationary community college instructor facing dismissal who on petition for writ of mandate, sought to benefit from an earlier court decision that involved different errors and omissions than those he had alleged in his petition for writ of mandate.

(5) Statutes § 3--Construction--Giving Effect to Statute--Sustaining Validity--Constitutionality.

If the terms of a statute are, by fair and reasonable interpretation, capable of a meaning consistent with requirements of the Constitution, then the statute will be given that meaning, rather than another that is in conflict with the Constitution.

COUNSEL

Van Bourg, Allen, Weinberg & Roger, Stewart Weinberg and Robert J. Bezemek for Plaintiff and Appellant.

Keith C. Sorenson, District Attorney, and Thomas F. Casey III, Assistant District Attorney, for Defendants and Respondents.

ROUSE, J.

Plaintiff Barry Anderson appeals from a judgment of the San Mateo County Superior Court which denied him a writ of mandate to compel defendant San Mateo Community College District and its governing board (hereafter collectively referred to as the District) to reinstate him as a Contract I instructor and to take no further action against him except in compliance with the rules and regulations of the District promulgated under section 13346.15 of the Education Code.

^{FN1}

FN1 Unless otherwise indicated, all statutory references are to the Education Code, as it existed prior to the 1977 reorganization.

Former section 13346.15 is now section 87607 of the reorganized code.

Following the issuance of an alternative writ of mandate, the District filed an answer and declarations in opposition to the petition. A hearing took place in January 1977, at which time the trial court concluded that it *444 lacked jurisdiction to review the decision of the District, based on section 13346.20.^{FN2} Accordingly, the alternative writ was discharged and the petition for writ of mandate denied.

FN2 Former section 13346.20 is now section 87608.

Thereafter, plaintiff filed proposed findings of fact and conclusions of law. At the hearing to consider the proposed findings and conclusions, the court determined that it did not have jurisdiction, and declined to adopt either the prepared findings of plaintiff or those submitted by the District. The final judgment was ordered to stand as of the date of the hearing. Plaintiff then filed this appeal.

Plaintiff was employed as a full-time instructor of respiratory therapy during the 1970-1971 school year by Skyline College of the District. He resigned at the end of that year and was rehired as a temporary employee in the spring of 1973. In 1974, he was hired as a probationary, or Contract I, employee for the 1974-1975 school year. For the fall semester, plaintiff was the instructor for three classes: respiratory therapy 52, respiratory therapy 54, and respiratory therapy 63.

Plaintiff's teaching performance was evaluated in the fall semester and was found to be deficient. Consequently, a decision was made by the District not to renew plaintiff's contract for the 1975-1976 college year. During the 1975-1976 school year, plaintiff became aware of a decision of the San Mateo County Superior Court in favor of Carolyn Ogletree, a similarly situated Contract I employee during the 1974-1975 school year whose termination had been found by the court to have been based upon an evaluation which was inadequate under the requirements of section 13346.15. Plaintiff then commenced this action, alleging that his termination was improper since his evaluation was likewise not carried out in compliance with the rules and regulations for evaluating employees as set forth by the District and as required by section 13346.15. More specifically, he alleged that the District's failure to reduce to writing the required evaluations and notifications, to meet certain dead-

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lines, and to provide for his evaluation by all his classes, made the evaluation process upon which his dismissal was based inadequate under the District's own standards. District, on the other hand, asserted that plaintiff's evaluation was in substantial compliance with its own evaluation procedures.

(1a) Plaintiff's first argument on appeal is that the superior court has jurisdiction to determine whether the District has violated the Education *445 Code of the State of California or its own administrative rules and regulations.

Section 13346.15 requires that the following evaluation standards and procedures be observed by the District: '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)^{FN3} 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.' Plaintiff emphasizes the wording 'shall be satisfied' in arguing that the intent of the Legislature was to insure strict compliance with this evaluation process. Plaintiff further points out that the standards and procedures devised by the District in accordance with section 13346.15, subdivision (a), can be enforced against the District by the employee. (*American Federation of Teachers v. Oakland Unified Sch. Dist.* (1967) 251 Cal.App.2d 91 [59 Cal.Rptr. 85].) Since the code section sets forth specific requirements for evaluating a probationary employee that were allegedly not met in the present case, plaintiff concludes that the superior court must have had jurisdiction to set aside the termination.

FN3 Former section 13480 is now section 87660.

The District contends that the provisions of sec-

tion 13346.15, when read in conjunction with those of section 13346.20, indicate that the Legislature intended termination of Contract I employees to be within the sole discretion of the District, subject to no judicial review.^{FN4} The District claims that plaintiff's case falls squarely within the language of those sections, hence the question of the adequacy of his evaluation was within the exclusive province of the District and is not subject to judicial review. *446

FN4 Section 13346.20 provides that '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.'

Thus we must decide whether the evaluation standards set forth in section 13346.15 are enforceable when noncompliance is claimed or whether section 13346.20 precludes the superior court from assuming jurisdiction.

(2) As a threshold question, the court must ascertain the intent of the Legislature so as to effectuate the purpose of the law. To this end, the effect of legislation dealing with the benefits and obligations of probationary teachers, enacted in 1971, must be considered. (Stats. 1971, ch. 1654, p. 3558; Ed. Code, § 13345 et seq.)^{FN5} This act granted regular or permanent employee status to community college teachers after two years (§ 13346.25).^{FN6} However, the new legislation also provided that under section 13346.20, first-year teachers would no longer have the right to a hearing upon a decision not to renew their contracts. Companion legislation (i.e., The Stull Bill, Assem. Bill No. 293 (1971 Reg.Sess.); Stats. 1971, ch. 361, pp. 720-727) made articles 5 and 5.5 of the Education Code no longer applicable to employees of community colleges.

FN5 Former section 13345 is now section 87600.

FN6 Former section 13346.25 is now section 87609.

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Thus it appears that the Legislature struck a balance between the teacher's need for employment security and the school board's need for flexibility. The successful teacher would achieve increased employment security in two years, while the school board would be able to 'weed out' unsatisfactory first-year teachers in a streamlined manner since no hearing was required.

However, since the Legislature provided for neither a hearing procedure nor arbitration for instructors in plaintiff's position, it is reasonable to conclude that the Legislature intended that the standards for evaluation under section 13346.15 be observed with care. (1b) In other words, we must assume that the Legislature recognized that, since an employee such as plaintiff cannot contest his nonrenewal in an adversary proceeding, the school district's decision that he is unfit to teach must be arrived at by means that will best insure the accuracy of this determination. An important corollary to this proposition is that the Legislature must also have recognized that the novice teacher would not benefit from the standards of section 13346.15 unless compliance with those standards was enforceable by law. Thus, the purpose and effect of the Stull *447 Bill leads us to conclude that denial of judicial review would effectively emasculate the provisions for evaluation of section 13346.15.

The relevant case law provides further grounds for our conclusion that the procedural protections of section 13346.15 are judicially enforceable. First, in accord with section 13346.15, the District adopted standards of evaluation and procedures for evaluation. As previously pointed out, such standards and procedures are normally enforceable by the employee. 'Rules and regulations adopted by a board of education are, in effect, a part of a teacher's employment contract and the teacher is entitled to their enforcement. [Citations.] [¶] As stated by the trial court: 'Among the purposes of a Board of Education in adopting rules governing transfer of personnel is the obvious one of improving morale (and, consequently, the performance of teachers) by establishing fair procedures and criteria which minimize the risk of arbitrary or prejudiced decisions or decisions based on incomplete or inaccurate facts or misunderstandings.' (American Federation of Teachers v. Oakland Unified Sch. Dist., supra., 251 Cal.App.2d at p. 97.) Similarly, the procedural protections of the Education Code itself

are enforceable by the teacher. (Pennel v. Pond Union School Dist. (1973) 29 Cal.App.3d 832, 839 (105 Cal.Rptr. 817).)

It cannot be denied that sections 13346.15 and 13346.20 make clear the Legislature's intent that the courts not interfere in a school district's business of evaluating the performance of teachers. However, section 13346.15 is meaningless unless its specific provisions for evaluation procedure are enforceable. A balance must be struck between a teacher's need for employment security and a school district's need for flexibility. This balance can best be achieved by allowing a teacher who charges noncompliance with evaluation procedures recourse to judicial review of such procedures while continuing the present protection of a school district from judicial interference with the merits of a nonrenewal decision.

(3) Even if this were not the case, it is unlikely that the Legislature can lawfully disallow recourse to an extraordinary writ such as the writ of mandate presently sought. In *Brock v. Superior Court* (1952) 109 Cal.App.2d 594, 601 [241 P.2d 283], the court discussed the nature of the writ: ^{FN7} "Historically, the writ of mandate was invented to provide a remedy where no other remedy existed. As is stated in 9 Halsbury's Laws *448 of England, 744, section 1269, in speaking of the writ of *mandamus*: [¶] 'Its purpose is to supply defects of justice; and accordingly it will issue, to the end that justice will be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing such right.' (See, also, 16 Cal.Jur. 764, sec. 4.)' (*Drummev v. State Board of Funeral Directors*, 13 Cal.2d 75, 82 [87 P.2d 848].)'

FN7 Administrative mandamus under section 1094.5 of the Code of Civil Procedure would not be available in the present case, since that writ is only issued following a decision made as the result of a proceeding in which by law a hearing is required to be given.

Section 1085 of the Code of Civil Procedure describes the function of the writ: 'It may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person ... to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such infe-

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rior tribunal, corporation, board or person.' Here, as a probationary employee facing dismissal, plaintiff has a legal right to be evaluated in accordance with the District's rules and regulations in order that the conclusion that he is not competent to teach be based on accurate and articulable grounds. Further, he can be said to have been unlawfully precluded by the school district from the use and enjoyment of this right.

In *Poschman v. Dumke* (1973) 31 Cal.App.3d 932 [107 Cal.Rptr. 596], an assistant professor at a state college filed a petition seeking a writ of mandamus. He alleged that when a review panel appointed by the chancellor to hear his grievance concerning denial of tenure recommended that he be granted tenure, the chancellor wrongfully overruled the recommendation after the board of trustees had revoked prior procedures making the recommendations of the panel binding on all parties. The court stated: 'Although appellant as a probationary academic employee may not have had an 'expectancy' of continued employment and no right not to be denied tenure [citation], he had, even under most minimal due process, a right to have his status determined in accordance with the valid rules and regulations established by the board of trustees or the administration on the local campus applicable thereto at the time. We agree that the delicate matter of tenure should be determined by the academic community and that courts should be reluctant to intervene. But where a determination is made in violation of its own established rules and regulations or under regulations that are invalid under statutes that bind the academic community ..., it cannot be argued that no legal remedy exists.' (P. 938.)

(4) Plaintiff's second contention on appeal is that the judgment by the San Mateo County Superior Court in *Ogletree, et al. v. San Mateo Community College District, et al.*, (No. 199404, entered May 7, 1976) is *449 binding on the superior court pursuant to the doctrine of res judicata and collateral estoppel.

Plaintiff claims that the requirements of collateral estoppel have been met so as to give the Ogletree judgment conclusive effect in the present controversy. These requirements are: (1) the issue decided in the prior adjudication must be identical to the issue presented in the action currently being litigated; (2) there must have been a final judgment on the merits of the previous action; and (3) the party against whom the plea is asserted must have been a party or in privity

with the party to the prior adjudicatory action. (*Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 813 [122 P.2d 897]; *Mulrooney v. Employers Reinsurance Corp.* (1969) 1 Cal.App.3d 942, 945 [81 Cal.Rptr. 907].)

In *Ashe v. Swenson* (1970) 397 U.S. 436, 443 [25 L.Ed.2d 469, 475, 90 S.Ct. 1189], the United States Supreme Court stated that collateral estoppel means that 'when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated. ...' In this state, the policy behind collateral estoppel is articulated by the California Supreme Court in the case of *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 605 [25 Cal.Rptr. 559, 375 P.2d 439]: 'The rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into controversy.' [Citation.] 'This policy must be considered together with the policy that a party shall not be deprived of a fair adversary proceeding in which fully to present his case.' [Citation.]'

We hold that the doctrine of collateral estoppel is not applicable in this instance, since it is evident that the present fact situation does not meet the requirement that the issue previously adjudicated be identical to the issue at hand. Here, plaintiff attempts to benefit from the Ogletree decision although the omissions and procedural errors which were involved there are different from those alleged by plaintiff. It is our view that the only issue which is subject to judicial review is whether plaintiff was evaluated in accordance with the rules and regulations of the District. At this point, it has not been established that plaintiff's evaluation was in fact procedurally defective. Only if plaintiff is able to persuade the superior court that he has been denied the procedural due process of an adequate evaluation will he be entitled to relief. Since the operative facts concerning the evaluation of a probationary employee will vary from case to case, it is obvious that the conclusion that there was improper *450 evaluation in one case will not necessarily determine the outcome of another case.

To decide otherwise would be to limit litigation at the expense of the defendant's right 'not [to] be deprived of a fair adversary proceeding. ...' (*Jorgensen v. Jorgensen* (1948) 32 Cal.2d 13, 18 [193 P.2d 728].) It is clear that the District may not be deprived of the

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opportunity to contest a charge of failure to evaluate which may be frivolous or misleading.

Finally, at oral argument, the District pointed out that Senate Bill No. 696, as originally introduced on June 16, 1971, contained proposed section 13346.35, which provided that: 'The decision of the governing board shall not be subject to judicial review, except on an issue that the procedural requirements of the statutes, the rules and regulations of the Board of Governors of the California Community Colleges or the local district governing board were not satisfied.' (Sen. Bill No. 696 (1971 Reg. Sess.)) This entire section was subsequently deleted, and was not a part of the bill when it was enacted.

It is the District's view that, by deleting the provisions of proposed section 13346.35, the Legislature manifested its clear intent not to permit a judicial review of the issue raised by plaintiff in this case, i.e., whether a local community college district governing board has complied with its own procedural requirements. The District cites several cases in support of its position. However, we believe that those cases must be distinguished from the case at bar. In this instance, unlike the cases cited, there is no extrinsic evidence to suggest that, by deleting proposed section 13346.35, the Legislature intended to prohibit judicial review of alleged procedural deficiencies in a governing board's decision. Such a purpose, in our view, would raise serious constitutional questions of due process.

We cannot quarrel with the District's position that, under the applicable statutes, plaintiff is not entitled to look behind the District's decision by way of judicial review. However, we reject the argument that the Legislature intended to prohibit a probationary teacher from having access to a judicial forum for the limited purpose of challenging a governing board's compliance with its own regulations. Such a restriction would contravene long standing policies concerning the right to judicial review and, as previously indicated, would undoubtedly be constitutionally impermissible. *451

(5) If the terms of a statute are, by fair and reasonable interpretation, capable of a meaning consistent with the requirements of the Constitution, then the statute will be given that meaning, rather than another which is in conflict with the Constitution. (*Braxton v. Municipal Court* (1973) 10 Cal.3d 138, 145 [109

Cal.Rptr. 897, 514 P.2d 697].) We believe that the foregoing analysis lends itself to a warm compatibility with the principles of due process. Thus we conclude that the trial court has jurisdiction of this matter for a very limited purpose.

Accordingly, the judgment is reversed and the case is remanded to the trial court for the sole determination of whether plaintiff was evaluated in accordance with the rules and regulations of the District and the Education Code.

Taylor, P. J., and Kane, J., concurred.

Respondents' petition for a hearing by the Supreme Court was denied February 14, 1979. *452

Cal.App.1.Dist.

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161 Cal.App.3d 871, 208 Cal.Rptr. 260, 21 Ed. Law Rep. 594
(Cite as: 161 Cal.App.3d 871, 208 Cal.Rptr. 260)

▷

Court of Appeal, Fourth District, Division 1, California.

Paul G. McGUIRE, Petitioner and Respondent,

v.

GOVERNING BOARD OF SAN DIEGO COMMUNITY COLLEGE DISTRICT, Appellant.

D000759.

Civ. 28730.

Oct. 18, 1984.

As Modified Nov. 16, 1984.

Governing board of a community college district appealed from the judgment of the Superior Court of San Diego County, Hugo Fisher, J., granting a writ of mandate ordering the board to reclassify an employee as a tenured employee. The Court of Appeal, Gamer, J., assigned, held that the employee who had taught 60% of full-time teaching assignment in spring 1977 semester and 40% of full-time class load through spring semester 1979 and who was employed as tutor between spring 1977 and spring 1979 was temporary employee and not entitled to tenure under statute providing tenure to those employees who have taught more than 60% of full-time teaching assignment and whose employment was not terminated after two years.

Reversed with directions.

West Headnotes

[1] Colleges and Universities 81 ⚡ 8.1(2)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal or Other Discipline

81k8.1(2) k. Tenure. Most Cited Cases

"Regular employee of community college district" is one who has achieved tenure. West's Ann.Cal.Educ.Code §§ 87602, 87604.

[2] Colleges and Universities 81 ⚡ 8.1(1)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal or Other Discipline

81k8.1(1) k. In General. Most Cited Cases

Colleges and Universities 81 ⚡ 8.1(2)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal or Other Discipline

81k8.1(2) k. Tenure. Most Cited Cases

Colleges and Universities 81 ⚡ 8.1(6.1)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal or Other Discipline

81k8.1(6) Judicial Review

81k8.1(6.1) k. In General. Most Cited Cases

(Formerly 81k8.1(6))

If contract employee of community college district is working under his first contract, district governing board has three options for the next year: not to enter into a contract for a second academic year, enter a contract for second year, or grant permanent or tenured status; if district chooses to keep employee in probationary or contract status for second year, at end of that year district has only two choices: to grant permanent status or not to grant such status and terminate teacher's employment; district's decision is discretionary and subject only to limited judicial review. West's Ann.Cal.Educ.Code §§ 87602, 87604, 87609.

[3] Colleges and Universities 81 ⚡ 8.1(1)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal or Other Discipline

81k8.1(1) k. In General. Most Cited Cases

Temporary employee of community college districts may continue to teach year after year provided each year the employee teaches not more than 60% of

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full-time assignment. West's Ann.Cal.Educ.Code §§
87482, 87602, 87604.

FN* Assigned by the Chairperson of the
Judicial Council.

[4] Colleges and Universities 81 ↪ 8.1(1)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal
or Other Discipline

81k8.1(1) k. In General. Most Cited Cases
Proper measure in determining whether employee of
community college district comes within statutory
definition of temporary employee employed for not
more than 60% of the hours per week considered
full-time assignment, is the number of hours the per-
son seeking tenure spends teaching classes compared
to the number of hours per week a regularly fully
assigned employee spends at comparable duties.
West's Ann.Cal.Educ.Code § 87482.

[5] Colleges and Universities 81 ↪ 8.1(2)

81 Colleges and Universities

81k8 Staff and Faculty

81k8.1 Duration of Employment and Removal
or Other Discipline

81k8.1(2) k. Tenure. Most Cited Cases
Employee of community college district who taught
60% of full-time teaching assignment in spring 1977
semester and 40% of full-time class load through
spring semester 1979 and who was also employed as
tutor between spring 1977 and spring 1979 was tem-
porary employee not entitled to tenure under statute
establishing tenure for those employees who have
taught more than 60% of full-time teaching assign-
ment and whose employment was not terminated after
two years as employee's duties as tutor were not
comparable to teaching a class notwithstanding some
similarity in that both instructors and tutors do provide
some individual students with assistance in particular
areas in which students are experiencing problems.
West's Ann.Cal.Educ.Code §§ 87482, 87602, 87604,
87609.

**261 *872 Lloyd M. Harmon, Jr., County Counsel,
and Barbara B. Baird, Deputy County Counsel, San
Diego, for appellants.

Knutson, Tobin, Meyer & Shannon and John S.
Meyer, San Diego, for petitioner and respondent.

873 GAMER, Associate Justice.^{FN}

FACTS

Petitioner and respondent Paul Gerald McGuire was
hired by the San Diego Community College District
(District) to teach class nine hours weekly in mathe-
matics for the spring semester 1977. A teaching cer-
tificate was required for the position. A full-time
teaching load is 15 classroom hours a week in the
District; thus, McGuire taught 60 percent of a
full-time teaching assignment in the spring 1977
semester. Thereafter, he taught six hours per week, or
40 percent of a full-time class load through the spring
semester 1979.

In addition, for all but one of the semesters between
spring 1977 and spring 1979, McGuire was separately
employed by the District under the different name of
Hilary McGuire as a Master Tutor in a program known
as the Independent Learning Center at City Col-
lege.^{FN1} This tutoring job required a credential for the
spring semester of 1979 due to demands imposed by
the fund out of which the tutor was paid. During other
semesters, a credential was not required to hold the
position. The wage and salary administrator for the
District testified tutoring was a noncertified function.
Nevertheless, McGuire was paid as a certificated
employee retroactive to the commencement of his
employment after initial payment at a "classified" rate.

FN1. McGuire tutored 229 hours at the
Center during the spring semester 1977; he
tutored 80 hours during the fall semester
1977, 132 hours during spring semester
1978, and 116 hours during the spring
semester 1979. The person who hired him as
a tutor knew him only as Hilary and not as
Paul Gerald McGuire. Thus, the fact one and
the same person was working as a tutor as
well as a teacher was not immediately ap-
parent.

His duties as a tutor were to provide assistance to
students who were regularly enrolled in District ma-
thematics courses and who came to him for help with
questions relating to the courses they were taking.
Furthermore, McGuire was required to keep records
indicating what topics were covered with which stu-

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dents. McGuire did not plan a course syllabus, prepare for individual sessions or evaluate a student's progress by awarding a grade or credit. He was not responsible for student attendance, student conduct or determining a course content. He did not hold office hours or undertake other administrative duties of a full-time faculty member. Students who came to the center were having problems with their regularly scheduled *874 classes and it was these individual problems that determined the help given. Most of the other tutors at the Center were students themselves.

McGuire argues his duties as Master Tutor were comparable to his duties as an instructor and thus he was assigned duties which constituted more than 60 percent of a comparable full-time teaching assignment for four semesters over a three-year period. He states tenure must be given to him by operation of law because he had exceeded the 60 percent limit and therefore was not properly classified as "temporary" under Education Code ^{FN2} section 87482 but was instead a "contract" employee whose employment was not terminated at the end of two years.

FN2. All statutory references are to the Education Code unless otherwise specified.

The District, however, classified McGuire as a temporary employee, defined in section 87482, which provides in pertinent part:

"Notwithstanding any other provision to the contrary, any person who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment for regular employees **262 having comparable duties shall be classified as a temporary employee, and shall not become a contract employee under the provisions of Section 87604."

McGuire was refused tenure. The issue for our consideration is whether the trial court ruled correctly in reclassifying McGuire as a tenured employee.

DISCUSSION

A general discussion of relevant Education Code sections is helpful to understand the parties' positions. The code authorizes community college districts to hire certificated employees in any of three categories:

"regular" (permanent); "contract" (probationary); and "temporary." (§§ 87602, 87604.)

[1][2] A "regular" employee is commonly referred to as one who has achieved tenure. "Contract" status is the first step toward tenure. If a contract employee is working under his first contract, the district governing board has three options for the next year: (a) not to enter into a contract for a second academic year, (b) enter a contract for a second year, or (c) grant permanent or tenured status. If the district chooses to keep the employee in a probationary or contract status for the second year, at the end of that year the district has only two choices: to grant permanent status or not to grant such status and terminate the teacher's employment. The district's decision is discretionary and subject only to limited judicial review (§ 87609).

[3] A "temporary" employee, on the other hand, may continue to teach year after year provided each year the employee teaches not more than 60 *875 percent of a full-time assignment (*Peralta Federation of Teachers v. Peralta Community College Dist.* (1979) 24 Cal.3d 369, 381, 155 Cal.Rptr. 679, 595 P.2d 113). The overriding policy consideration is to give the district maximum flexibility in classifying newly hired teachers while preventing an exploitation of temporary instructors who carry the equivalent of a full-time teaching load without any of the benefits of tenured status. Teachers are to be afforded a measure of employment security (*Kalina v. San Mateo Community College Dist.* (1982) 132 Cal.App.3d 48, 54, 183 Cal.Rptr. 12).

[4] Turning to the specific language of section 87482 defining a temporary employee, it speaks of a person "who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment." We conclude the statute means what it says and the proper measure in determining whether the 60 percent limit is exceeded is the number of hours the person seeking tenure spends teaching classes compared to the number of hours per week a regular fully assigned employee spends on comparable duties. The statutory language emphasizes the teaching of classes. A reference in the statute to "employees having comparable duties" refers back to this teaching of adult or community college classes and follows that emphasis.

In *Rooney v. San Diego Community College Dist.*

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(1982) 129 Cal.App.3d 977, 181 Cal.Rptr. 464, the court in determining whether the 60 percent limit had been exceeded examined the employee's regularly assigned teaching hours to see if these hours exceeded 60 percent of the classroom teaching portion of a full-time assignment (*id.* at p. 981, 181 Cal.Rptr. 464). Similarly, the court in *Kalina v. San Mateo Community College Dist.*, *supra*, 132 Cal.App.3d 48, 51, 183 Cal.Rptr. 12, also discussed the 60 percent limit of section 87482 in terms of the number of units taught, with 15 units considered a full-time assignment.

[5] McGuire never contended he taught more than 60 percent of a full-time teaching assignment measured in actual teaching hours and, in fact, admitted for the majority of the time period in question, he taught no more than 40 percent of the hours per week considered a full-time assignment. Instead, he asked the court to equate one hour of tutoring an individual or sitting in the Learning Center waiting for an individual to tutor with one hour of ****263** teaching a class. The evidence does not support his argument. The evidence shows the extra work McGuire did was not comparable to teaching a class. There is some similarity: both instructors and tutors do in fact provide individual students with assistance in particular areas where the students are experiencing problems. This, however, is the tutor's only duty, while the teacher carries the full range of responsibility for educating and later evaluating the student in a particular area. A teacher must have a credential, whereas a tutor generally need not have one. To say the tutor is the equivalent ***876** of one who teaches a class is to render meaningless both the statutory scheme and the common sense distinction between teaching a class and tutoring a student. It ignores the plain language of section 87482.

We conclude McGuire is not entitled to tenure.^{FN3} The judgment of the court is reversed with directions to enter judgment for the District.

FN3. In light of this conclusion, we need not rule on other issues raised. We find, however, based on the record before us, the trial court's failure to sustain the District's demurrer on the ground the proceeding was barred by the statute of limitations (Code Civ.Proc., § 338, subd. (1)) is correct. The petition did not show on its face the action was barred and District did not obtain a direct ruling on the point at any later time as the trial court per-

mitted.

WORK, Acting P.J., and BUTLER, J., concur.
Cal.App. 4 Dist., 1984.
McGuire v. Governing Board
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H

Court of Appeal, Second District, Division 5, California.

Ferial SHAMSIAN, Plaintiff and Appellant,

v.

DEPARTMENT OF CONSERVATION, et al., Defendants and Respondents.

No. B184680.

Feb. 7, 2006.

Review Denied June 14, 2006.^{FN*}

FN* Baxter, Chin and Corrigan, JJ., did not participate therein. Kennard, Werdegar and Johnson, JJ., dissented.

Background: Plaintiff filed purported class action and mandate petition against Department of Conservation, state officials, and two beer companies, alleging that defendants failed to discharge their joint statutory obligation under the Beverage Container Recycling and Litter Reduction Act to provide convenient, economical, and efficient beverage container redemption opportunities for California consumers. Plaintiff also alleged violations of the unfair competition law (UCL), and sought declaratory relief. The Superior Court, Los Angeles County, No. BS091563, Carl J. West, J., entered judgment of dismissal. Plaintiff appealed.

Holdings: The Court of Appeal, Turner, P.J., held that:

- (1) there was no mandatory statutory duty on which plaintiff could base private claim or action for declaratory relief against defendants;
- (2) there was no ministerial act on which plaintiff could base mandate petition; and
- (3) equitable abstention principles barred UCL claim.

Affirmed.

West Headnotes

[1] Municipal Corporations 268  723


268 Municipal Corporations
268XII Torts

268XII(A) Exercise of Governmental and Corporate Powers in General

268k723 k. Nature and Grounds of Liability.

Most Cited Cases

Statute allowing an exception to governmental immunity and creating a private right of action where there is a mandatory duty to protect against the risk of a particular kind of injury requires that the enactment at issue be obligatory, rather than merely discretionary or permissive, in its directions to the public entity; it must require, rather than merely authorize or permit, that a particular action be taken or not taken. West's Ann.Cal.Gov.Code § 815.6.

[2] Action 13  3

13 Action

13I Grounds and Conditions Precedent

13k3 k. Statutory Rights of Action. Most Cited Cases

Environmental Law 149E  385


149E Environmental Law

149EVIII Waste Disposal and Management

149Ek385 k. Private Right of Action; Citizen Suits. Most Cited Cases

There was no mandatory statutory duty under Beverage Container Recycling and Litter Reduction Act on which plaintiff could base private claim against Department of Conservation, state officials, and two beer companies, based on their alleged failure to discharge their joint obligation under Act; provision of Act imposing joint responsibility on manufacturers, distributors, dealers, recyclers, processors, and the Department to provide convenient, efficient, and economical redemption opportunities was mere statement of legislative intent and imposed no mandatory obligation to act, and provisions pertaining to establishment of recycling centers were also discretionary. West's Ann.Cal.Gov.Code § 815.6; West's Ann.Cal.Pub.Res.Code §§ 14501(g), 14571(a), 14571.8(b).

See 12 *Witkin, Summary of Cal. Law (10th ed. 2005) Real Property*, § 875; *Cal. Jur. 3d, Pollution and Conservation Laws*, § 489.

[3] Mandamus 250  73(1)

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250 Mandamus

250II Subjects and Purposes of Relief

250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities

250k73 Specific Acts

250k73(1) k. In General. Most Cited Cases

Mandamus 250 ↪140

250 Mandamus

250II Subjects and Purposes of Relief

250II(C) Acts and Proceedings of Private Corporations and Individuals

250k140 k. Individual Duties and Obligations. Most Cited Cases

There was no ministerial act on which plaintiff could base mandate petition against Department of Conservation, state officials, and two beer companies, seeking to compel defendants to discharge their alleged joint statutory obligation under Beverage Container Recycling and Litter Reduction Act; provision of Act imposing joint responsibility on manufacturers, distributors, dealers, recyclers, processors, and the Department to provide convenient, efficient, and economical redemption opportunities was mere statement of legislative intent and imposed no affirmative duty that would be enforceable through writ of mandate, and provisions pertaining to establishment of recycling centers were also discretionary. West's Ann.Cal.C.C.P. § 1085(a); West's Ann.Cal.Pub.Res.Code §§ 14501(g), 14571(a), 14571.8(b).

[4] Mandamus 250 ↪72

250 Mandamus

250II Subjects and Purposes of Relief

250II(B) Acts and Proceedings of Public Officers and Boards and Municipalities

250k72 k. Matters of Discretion. Most Cited Cases

A writ of mandate will not lie to control discretion conferred upon a public officer or agency. West's Ann.Cal.C.C.P. § 1085(a).

[5] Mandamus 250 ↪10

250 Mandamus

250I Nature and Grounds in General
250k10 k. Nature and Existence of Rights to Be Protected or Enforced. Most Cited Cases

Mandamus 250 ↪12

250 Mandamus

250I Nature and Grounds in General

250k12 k. Nature of Acts to Be Commanded. Most Cited Cases

Two basic requirements are essential to the issuance of a writ of mandate: (1) a clear, present and usually ministerial duty upon the part of the respondent, and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. West's Ann.Cal.C.C.P. § 1085(a).

[6] Antitrust and Trade Regulation 29T ↪283

29T Antitrust and Trade Regulation

29TIII Statutory Unfair Trade Practices and Consumer Protection

29TIII(E) Enforcement and Remedies

29TIII(E)1 In General

29Tk281 Exclusive and Concurrent Remedies or Laws

29Tk283 k. Judicial Remedies Prior to or Pending Administrative Proceedings. Most Cited Cases

(Formerly 382k864 Trade Regulation)

Equitable abstention principles barred plaintiff's claim under unfair competition law (UCL) against Department of Conservation, state officials, and two beer companies, based on their alleged failure to discharge their joint statutory obligation under Beverage Container Recycling and Litter Reduction Act to provide convenient, efficient, and economical redemption opportunities to California consumers, as equitable judicial action under UCL would interfere with Department's administration of Act and regulation of beverage container recycling, and potentially throw complex economic arrangement out of balance. West's Ann.Cal.Bus. & Prof.Code § 17200; West's Ann.Cal.Pub.Res.Code §§ 14501(g), 14571(a), 14571.8(b).

[7] Antitrust and Trade Regulation 29T ↪370

29T Antitrust and Trade Regulation

29TIII Statutory Unfair Trade Practices and

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Consumer Protection

29TIII(E) Enforcement and Remedies

29TIII(E)7 Relief

29Tk370 k. In General. Most Cited

Cases

(Formerly 382k864 Trade Regulation)

Constitutional Law 92 ↪2502(3)

92 Constitutional Law

92XX Separation of Powers

92XX(C) Judicial Powers and Functions

92XX(C)2 Encroachment on Legislature

92k2499 Particular Issues and Applications

tions

92k2502 Business and Industry

92k2502(3) k. Antitrust and Trade

Regulation. Most Cited Cases

(Formerly 92k70.1(3), 382k864 Trade Regulation)

Because the remedies available under the unfair competition law (UCL), namely injunctions and restitution, are equitable in nature, courts have the discretion to abstain from employing them; where a UCL action would drag a court of equity into an area of complex economic or similar policy, equitable abstention is appropriate, as it is primarily a legislative and not a judicial function in such cases to determine the best economic policy. West's Ann.Cal.Bus. & Prof.Code § 17200.

[8] Declaratory Judgment 118A ↪81

118A Declaratory Judgment

118AII Subjects of Declaratory Relief

118AII(A) Rights in General

118Ak81 k. Subjects of Relief in General.

Most Cited Cases

Declaratory Judgment 118A ↪204

118A Declaratory Judgment

118AII Subjects of Declaratory Relief

118AII(K) Public Officers and Agencies

118Ak204 k. State Officers and Boards.

Most Cited Cases

There was no mandatory statutory duty under Beverage Container Recycling and Litter Reduction Act on which plaintiff could base action for declaratory relief against Department of Conservation, state officials, and two beer companies; provision of Act imposing

joint responsibility on manufacturers, distributors, dealers, recyclers, processors, and the Department to provide convenient, efficient, and economical redemption opportunities was mere statement of legislative intent and imposed no mandatory obligation to act. West's Ann.Cal.Pub.Res.Code § 14501(g).

**64 Law Offices of Arnold G. Regardie and Arnold G. Regardie, Los Angeles, for Plaintiff and Appellant.

Bill Lockyer, Attorney General, Tom Greene, Chief Assistant Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, William S. Abbey and Jennifer F. Novak, Deputy Attorneys General, for Defendants and Respondents.

Orrick, Herrington & Sutcliffe, D. Barclay Edmondson and Frank D. Rorie, Los Angeles; Skadden, Arps, Slate, Meagher & Flom, Thomas J. Nolan and Robert J. Herrington, Los Angeles, for Defendants and Respondents Anheuser-Busch, Inc. and Miller Brewing Company.

TURNER, P.J.

*626 I. INTRODUCTION

Plaintiff, Ferial Shamsian, appeals from a judgment dismissing her first amended complaint and denying her mandate petition as to defendants: the Department of Conservation (department); two individuals-Darryl W. Young, department director, and Jim Ferguson, assistant director of the California Beverage Container Recycling Program; and two corporations-Anheuser-Busch, Inc. and Miller Brewing Company (the corporate defendants). Plaintiff alleged the defendants had failed to **65 provide convenient, economical, and efficient beverage container redemption opportunities for California consumers as required by section 14501, subdivision (g) of the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code ^{FN1} section 14500 et seq. (the act).

FN1. All further statutory references are to the Public Resources Code except where otherwise noted.

Plaintiff raises two contentions she claims are dispositive of this appeal. To begin with, plaintiff asserts defendants have a mandatory duty pursuant to section

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14501, subdivision (g) such that a private right of action challenging their alleged inaction may be pursued by her. The trial court ruled there was no mandatory duty created by section 14501, subdivision (g). Also, plaintiff argues she can pursue her Business and Professions Code section 17200 unfair competition claims. The trial court ruled equitable abstention principles barred plaintiff's unfair competition claims. We agree with the trial court on both counts and affirm the judgment.

II. BACKGROUND

A. The Act

The Legislature adopted the act in 1986. (Stats.1986, ch. 1290, § 2, pp. 4539-4568.) The act creates a comprehensive administrative scheme designed to encourage and facilitate the large-scale recycling of used beverage *627 containers. The act establishes a department administered program designed to achieve stated recycling goals through a complex arrangement of financial incentives. The act attempts to balance the competing interests of the varied participants in the beverage container and recycling industries. It requires for its success cooperation among manufacturers, distributors, recycling centers, supermarkets, and consumers. Additionally, it attempts to make recycling convenient for the consuming public. (§ 14500 et seq.; see *Californians Against Waste v. Department of Conservation* (2002) 104 Cal.App.4th 317, 325-326, 127 Cal.Rptr.2d 905.)

The act is administered and enforced by the department. (§ 14530; see also, e.g., §§ 14538, 14539.) The department is authorized to adopt regulations. (§ 14536; Cal.Code Regs., tit. 14, § 2000 et seq.) A violation of the act is an infraction punishable by a fine (§ 14591, subd. (a)) or, in the case of fraud, by a fine as well as possible imprisonment, potentially in the state penitentiary. (§ 14591, subd. (b).) The department is authorized, among other things, to: assess civil penalties for violations of the act (§ 14591.1) including unfair recycling competition (§ 14588 et seq.); take disciplinary action (§ 14591.2); seek restitution of money illegally paid (§ 14591.4); issue cease and desist orders (§ 14591.6, subd. (a)); and request that the Attorney General seek injunctive relief. (§ 14591.6, subd. (e).) Penalties, restitution and other remedies imposed by the department can be enforced by means of a judgment having the same force and

effect as a judgment in a civil action. (§ 14591.5.)

The Legislature found and declared in section 14501 as follows: "(a) *Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping**66 center locations, independent and industry operated recycling centers, curbside programs, non-profit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.* [¶] (b) California grocery, beer, soft drink, container manufacturing, labor, agricultural, consumer, environmental, government, citizen, recreational, taxpayer, and recycling groups have joined together in calling for an innovative program to generate large-scale redemption and recycling of beverage containers. [¶] (c) *This division establishes a beverage container recycling goal of 80 percent, and when the redemption rate for any one type of beverage container falls below 65 percent, this division provides for an increased refund value.* [¶] (d) It is the intent of the Legislature to ensure that every container type proves its own recyclability. [¶] (e) It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby urges cities and counties, when *628 exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience, and the overall success of litter abatement and beverage container recycling in the state. [¶] (f) The purpose of this division is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs. [¶] (g) *The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation.* [¶] (h) It is the intent of the Legislature, in enacting this

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division, that all empty beverage containers redeemed shall be recycled, and that the responsibilities and regulations of the department shall be determined and implemented in a manner which favors the recycling of redeemed containers, as opposed to their disposal. [¶] (i) Nothing in this division shall be interpreted as affecting the current business practices of scrap dealers or recycling centers, except that, to the extent they function as a recycling center or processor, they shall do so in accordance with this division [¶] (j) The program established by this division will contribute significantly to the reduction of the beverage container component of litter in this state." (Italics added.)

Section 14571, subdivision (a) provides: "Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value, if any, at one location for all types of empty beverage containers...." "Convenience zone" is defined in section 14509.4, subdivision (a) as, "The area within a one-half mile radius of a supermarket." However, the department has discretion under specified circumstances to increase the size of a convenience zone in a rural region to within a three-mile radius of a supermarket. (§ 14509.4, subd. (b)(1) & (2).) The department also has discretion to grant an exemption from the section 14571 requirement of one certified recycling center or location within every convenience zone. (§ 14571.8.) Section 14571.8, subdivision **67 (b) states in part: "The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of *629 recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption." FN2

FN2. Section 14571.8, subdivision (b) states in full: "The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of recycling centers, dealers, and members of the public in the jurisdiction af-

ected by the proposed exemption are aware of the proposed exemption. After evaluation of the testimony and any field review conducted, the department shall base a decision to exempt a convenience zone on one, or any combination, of the following factors: [¶] (1) The exemption will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types. [¶] (2) Except as provided in paragraph (5), the nearest certified recycling center is within a reasonable distance of the convenience zone being considered from exemption. [¶] (3) The convenience zone is in the area of a curbside recycling program that meets the criteria specified in Section 14509.5. [¶] (4) The requirements of Section 14571 cannot be met in a particular convenience zone due to local zoning or the dealer's leasehold restrictions for leases in effect on January 1, 1987, and the local zoning or leasehold restrictions are not within the authority of the department and the dealer. However, any lease executed after January 1, 1987, shall meet the requirements specified in subdivision (a). [¶] (5) The convenience zone has redeemed less than 60,000 containers per month for the prior 12 months and, notwithstanding paragraph (2), a certified recycling center is located within one mile of the convenience zone that is the subject of the exemption."

B. The First Amended Complaint and the Mandate Petition

Plaintiff's first amended complaint and mandate petition were brought "individually and on behalf of all others similarly situated." Plaintiff's central allegation was that defendants were jointly responsible for providing convenient, economical, and efficient beverage container redemption opportunities for California consumers pursuant to section 14501, subdivision (g) of the act, but had failed to do so. Only the first, sixth, ninth, tenth, and eleventh causes of action of the first amended complaint concerned the present defendants. In her first cause of action, plaintiff sought a writ of mandate to compel compliance with defendants' "mandatory statutory joint duty and responsibility to provide convenient, efficient, and economical re-

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demption opportunities ..." as required by section 14501, subdivision (g) of the act. Plaintiff sought an order "that all convenience zones include within its [*sic*] boundaries at least one recycling center" as required by section 14571. In her sixth cause of action, plaintiff sought restitution and disgorgement of profits as against defendants, other than the department, for engaging in unfair and unlawful business practices in violation of Business and Professions Code section 17200. Plaintiff alleged defendants had "jointly failed to implement the [a]ct by not providing convenient, efficient, and economical redemption opportunities to California consumers ... in sufficient numbers to reach a recycling rate of 80 [percent], in violation of [section] 14501[, subdivision] (c) [establishing the 80 percent recycling goal] and [section] 14501 [, subdivision] (g) of the [a]ct [setting forth the need for redemption opportunities]." The *630 ninth **68 cause of action alleged the department had "wrongfully and unlawfully failed to carry out its statutory duty to provide convenient, efficient, and economical redemption opportunities ... as required by the [a]ct, including but not limited to" section 14501[, subdivision] (g). Plaintiff sought imposition of a constructive trust on unspent cash redemption value funds (non-refunded beverage container deposits) in the department's possession. The tenth cause of action, for an accounting, was brought against the department for violating section 14501, subdivision (g) of the act. The eleventh cause of action sought declaratory relief "as to the interpretation, application and effect of the [a]ct, including but not limited to [section] 14501[, subdivision] (g), and the rights, duties and responsibilities of the parties with respect thereto."

Plaintiff's separately filed Code of Civil Procedure section 1085 mandate petition paralleled her first amended complaint. The first cause of action sought a writ of mandate to compel compliance with the "mandatory statutory duties" imposed by the act "including but not limited to" section 14501, subdivision (g). Plaintiff requested an order "commanding [defendants] to comply with the [act], specifically [section] 14501[, subdivision] (g), by providing convenient, efficient, and economical redemption opportunities for consumers ..., including but not limited to ..." requiring at least one recycling center in every convenience zone. The remaining causes of action as against the present defendants were: the sixth, for restitution and disgorgement of profits against the corporate defendants for engaging in unfair and unlawful business practices in violation of Business and

Professions Code section 17200, "in that they have jointly failed to implement the [a]ct by providing convenient, efficient, and economical redemption opportunities to California beverage container consumers ... in adequate numbers to reach a recycling rate of 80 [percent], in violation of [section] 14501 [, subdivision] (g) of the [a]ct"; the ninth for imposition of a constructive trust against unredeemed cash redemption value funds in the department's possession as a result of its failure to provide convenient, efficient, and economical redemption opportunities as required by the act including section 14501, subdivision (g); the tenth against the department for an accounting of unredeemed cash redemption value funds wrongfully retained because plaintiff and other consumers had insufficient redemption opportunities; and the eleventh for "a judicial declaration as to the interpretation, application and effect of the [a]ct, including but not limited to [section] 14501 [, subdivision] (g)...." Plaintiff's eleventh cause of action alleged section 14501, subdivision (g) was not being "adequately" implemented.

C. The Trial Court's Ruling

The parties agreed the trial court would determine certain threshold issues of law regarding the viability of plaintiff's claims for relief "in lieu of *631 generalized demurrers" to the first amended complaint. The trial court concluded: there was no private right of action or mandatory "duty" of compliance under the act that would support plaintiff's claims against defendants; plaintiff had no standing to seek a writ of mandate under Code of Civil Procedure section 1085; the act vested discretion in the department to develop a recycling program consistent with legislative goals and there was no ministerial act that plaintiff could compel; there was no duty under the act and therefore no basis for an unlawful business practices claim under Business and Professions Code section 17200 et seq.; and equitable abstention was appropriate in light of the comprehensive administrative**69 scheme created to address beverage container recycling.

III. DISCUSSION

A. Standards of Review

The trial court's ruling was in the nature of a demurrer dismissal. Therefore, consistent with the standard of review on appeal from an order sustaining a demurrer

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without leave to amend, we give the complaint a reasonable interpretation, and treat the demurrer as admitting all material facts properly pleaded. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126, 119 Cal.Rptr.2d 709, 45 P.3d 1171; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967, 9 Cal.Rptr.2d 92, 831 P.2d 317; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 703 P.2d 58.) In addition, whether section 14501, subdivision (g) imposes a mandatory duty or supports a private right of action is a question of statutory interpretation and of law for the court. (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 499, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services* (1998) 18 Cal.4th 623, 631, 76 Cal.Rptr.2d 489, 957 P.2d 1323.) We exercise our independent judgment in resolving that issue. (*City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 949, 22 Cal.Rptr.3d 518, 102 P.3d 904 [Code Civ. Proc. § 1085 mandate petition]; *McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1583-1584, 18 Cal.Rptr.2d 680 [same].) We apply the following standard of statutory review described by our Supreme Court: "When interpreting a statute our primary task is to determine the Legislature's intent. [Citation.] In doing so we turn first to the statutory language, since the words the Legislature chose are the best indicators of its intent." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826, 25 Cal.Rptr.2d 148, 863 P.2d 218; *People v. Jones* (1993) 5 Cal.4th 1142, 1146, 22 Cal.Rptr.2d 753, 857 P.2d 1163.) Further, our Supreme Court has noted: "'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature....'" (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798, 268 Cal.Rptr. 753, 789 P.2d 934; accord, *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 977, 90 Cal.Rptr.2d 260, 987 P.2d 727.)

*632 B. Mandatory Duty or Private Right of Action

The first important question before us is whether the act imposes a mandatory duty on the defendants "to provide convenient, efficient, and economical redemption opportunities" (§ 14501, subd. (g)), the breach of which obligation creates a private right of action by plaintiff. With respect to a public entity such as the department, Government Code section 815.6 allows an exception to governmental immunity and creates a private right of action where there is a

mandatory duty to protect against the risk of a particular kind of injury. (Gov.Code, § 815.6; *Haggis v. City of Los Angeles*, *supra*, 22 Cal.4th at pp. 498-500, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services*, *supra*, 18 Cal.4th at pp. 630-631, 76 Cal.Rptr.2d 489, 957 P.2d 1323; *Nunn v. State of California* (1984) 35 Cal.3d 616, 624, 200 Cal.Rptr. 440, 677 P.2d 846.) The effect of Government Code section 815, subdivision (a) on the right to sue a public entity was described in *Creason v. Department of Health Services*, *supra*, 18 Cal.4th at pages 630-631, 76 Cal.Rptr.2d 489, 957 P.2d 1323: "The California Tort Claims Act provides that a public entity is not liable for injury arising from an act or omission except as provided by statute. (Gov.Code, § 815, subd. (a); see **70*Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 809, 205 Cal.Rptr. 842, 685 P.2d 1193.) Under Government Code section 815.6, as we have construed it, 'a public entity is liable for an injury proximately caused by its failure to discharge a mandatory duty designed to protect against the risk of a particular kind of injury....' (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 904, 136 Cal.Rptr. 251, 559 P.2d 606; see *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 896, 45 Cal.Rptr.2d 646; *State of California v. Superior Court* (1984) 150 Cal.App.3d 848, 854, 197 Cal.Rptr. 914.) Whether a particular statute is intended to impose a mandatory duty, rather than a mere obligation to perform a discretionary function, is a question of statutory interpretation for the courts. (*Nunn v. State of California*, *supra*, 35 Cal.3d at p. 624, 200 Cal.Rptr. 440, 677 P.2d 846.)" If a statute does not require that a "particular action" be taken, Government Code section 815.6 does not create the right to sue a public entity. (*Haggis v. City of Los Angeles*, *supra*, 22 Cal.4th at pages 498-499, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services*, *supra*, 18 Cal.4th at p. 631, 76 Cal.Rptr.2d 489, 957 P.2d 1323.) In *Creason*, the Supreme Court emphasized the statutory scheme at issue, the Hereditary Disorders Act, required the Department of Health Services select accurate standards for testing for and reporting possible congenital hypothyroidism. (*Creason v. Department of Health Services*, *supra*, 18 Cal.4th at p. 626, 76 Cal.Rptr.2d 489, 957 P.2d 1323.) The Supreme Court described the scope of discretion under the Hereditary Disorders Act as follows: "[T]he statutory scheme at issue here makes reasonably clear that the state is given substantial discretion in formulating and reporting appropriate testing standards for hypothyroidism, al-

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though the Legislature has specified certain general principles to guide the exercise of that discretion. Moreover, although the Hereditary Disorders Act included some mandatory language in describing the state's obligations, the *633 act's provisions disclose no legislative intent to confer a private right of action for the state's breach of its statutory duties." (*Id.* at p. 631, 76 Cal.Rptr.2d 489, 957 P.2d 1323.)

[1] The Supreme Court has described the nature of the duty that must be present in order for there to be statutory liability by a public entity: "[S]ection 815.6 requires that the enactment at issue be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken. (*Morris v. County of Marin* [*supra*,] 18 Cal.3d [at pp.] 907, 910, 136 Cal.Rptr. 251, 559 P.2d 606.) It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. (*Creason v. Department of Health Services* [*supra*,] 18 Cal.4th [at pp.] 631-633, 76 Cal.Rptr.2d 489, 957 P.2d 1323....)" (*Haggis v. City of Los Angeles*, *supra*, 22 Cal.4th at p. 498, 93 Cal.Rptr.2d 327, 993 P.2d 983; see *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639, 125 Cal.Rptr.2d 637.) (Plaintiff does not contend she has a cause of action against the corporate defendants in the absence of a duty such as would support a claim against the department.)

[2] Plaintiff concedes the Legislature did not grant an explicit right to sue to enforce the act. But our Supreme Court has held the absence of an "express right to sue" is not dispositive. (*Santa Clara County Counsel Attys. Assn. v. Woodside***71 (1994) 7 Cal.4th 525, 539, 28 Cal.Rptr.2d 617, 869 P.2d 1142.) Plaintiff argues the clear language of section 14501, subdivision (g) imposes a joint mandatory duty on all of the defendants to provide convenient, efficient, and economical redemption opportunities throughout the state. We agree with the trial court that a plain reading of section 14501, subdivision (g) reveals it is a statement of legislative intent. Section 14501 is unofficially entitled "Legislative Findings and Declarations." It begins with the phrase, "The Legislature finds and declares as follows...." (§ 14501.) As noted previously, section 14501, subdivision (g), which is part of the legislative findings of the act, simply states, "The responsibility to provide convenient, efficient,

and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation." With these words, the Legislature conveyed its intent that the responsibility to provide redemption opportunities would rest not just with the department but with all of the principal participants in the beverage container recycling scheme. (§ 14501, subd. (g).) However, as the Courts of Appeal have repeatedly held, a statement of legislative intent may not give rise to a mandatory duty. (*County of Los Angeles v. Superior Court*, *supra*, 102 Cal.App.4th at p. 639, 125 Cal.Rptr.2d 637; *MacDonald v. State of California* (1991) 230 Cal.App.3d 319, 330, 281 Cal.Rptr. 317; *Tirpak v. Los Angeles Unified School Dist.* (1986) 187 Cal.App.3d 639, 642-643, 232 Cal.Rptr. 61; *Ibarra v. California Coastal Commission* (1986) 182 Cal.App.3d 687, 694, 227 Cal.Rptr. 371.) The statement of legislative intent in section 14501, *634 subdivision (g) does not impose a mandatory duty the breach of which gives rise to a private right of action.

At oral argument, plaintiff's counsel asserted defendants' mandatory duty also arose from section 14501, subdivision (a), which provides: "Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, nonprofit dropoff programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically." The foregoing analysis applies with equal force to section 14501, subdivision (a). For the reasons discussed above with respect to subdivision (g), section 14501, subdivision (a) is also a statement of legislative intent. The statement of legislative intent in section 14501, subdivision (a) does not impose a mandatory duty.

Plaintiff asserts a private right of action was intended by the Legislature's enactment of section 14530.6, which provides: "Upon the request of the department, the Attorney General shall represent the department and the state in litigation concerning affairs of the

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department.” Plaintiff contends the Legislature clearly expected the department would be sued to enforce the act. We disagree. Section 14530.6 states only that the Attorney General is required to represent the department in litigation concerning its affairs. This is consistent, for example, with section 14591.6, subdivision (e), which authorizes the department to ask the Attorney General to seek injunctive relief on the department's behalf to restrain activity in violation**72 of a department-issued cease and desist order. Nothing in the language of section 14530.6 suggests the Legislature intended to allow individuals such as plaintiff to sue the department to enforce the act.

Plaintiff relies on our Supreme Court's analysis in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 440, 261 Cal.Rptr. 574, 777 P.2d 610, in holding that former Elections Code sections 302 and 304^{FN3} authorized a private cause of action be brought to compel counties to design and implement voter *635 outreach programs. The issue before the Supreme Court was whether under Elections Code **73 section 304 only the Attorney General had the standing to bring suit to enforce the county registrar's obligation to implement voter outreach programs. The Supreme Court held that a private cause of action could be pursued by an entity other than the Attorney General and reasoned as follows: “First, the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing (see *Harman [v. City and County of San Francisco]* (1972) 7 Cal.3d 150, 160, 101 Cal.Rptr. 880, 496 P.2d 1248; *Blair v. Pitchess* (1971) 5 Cal.3d 258, 267-268, 96 Cal.Rptr. 42, 486 P.2d *636 1242; *Wirin v. Parker* (1957) 48 Cal.2d 890, 894, 313 P.2d 844), and our recognition of a ‘public interest’ exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings (*Green v. Obledo* [(1981)] 29 Cal.3d 126, 144, 172 Cal.Rptr. 206, 624 P.2d 256; *Bd. of Soc. Welfare v. County of L.A.* (1945) 27 Cal.2d 98, 100-101, 162 P.2d 627). In the absence of either an express limitation on citizen standing or any indication of legislative intent to confer exclusive powers on the Attorney General, we decline to impose such a limitation on citizen actions to enforce section 304 and its accompanying regulations. (Cf. *People v. City of South Lake Tahoe* (E.D.Cal.1978) 466 F.Supp. 527 [conferral of en-

forcement power on Attorney General not determinative of exclusivity question under California law].) [¶] Second, plaintiffs' action is not based solely on section 304. To the contrary, they rely principally on section 302, which authorizes county clerks to deputize citizens as deputy registrars. It cannot reasonably be maintained that, by enacting and providing for the enforcement of section 304—which mandates the adoption of outreach programs—the Legislature intended to preclude citizens from bringing actions to enforce the provisions of section 302, a preexisting statute that governs counties' deputization of voting registrars. Were we to accept County's contention, courts would be required to consider claims alleging violations of section 302 in isolation from closely related claims alleging violations of section 304 and its accompanying regulations. Considerations of judicial efficiency militate strongly against such a result.” (*Common Cause v. Board of Supervisors, supra*, 49 Cal.3d at pp. 440-441, 261 Cal.Rptr. 574, 777 P.2d 610, fn. omitted.)

FN3. In 1989, Elections Code section 302 provided: “(a) It is the intent of the Legislature that the election board of each county, in order to promote and encourage voter registrations, shall establish a sufficient number of registration places throughout the county, and outside the county courthouse, for the convenience of persons desiring to register, to the end that registration may be maintained at a high level. [] (b) It is also the intent of the Legislature that county clerks, in order to promote and encourage voter registrations, shall enlist the support and cooperation of interested citizens and organizations, and shall deputize as registrars qualified citizens in such a way as to reach most effectively every resident of the county. The persons so deputized shall be permitted to register voters anywhere within the county, including at the places of residence of the persons to be registered, and the county clerk shall not deny deputy registrars the right to register voters anywhere in the county. [] (c) It is also the intent of the Legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to registration by citizens who lack sufficient skill in English to register without assistance. [] (d) Where the

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county clerk finds that citizens described in subdivision (c) approximate 3 percent or more of the voting age residents of a precinct, or in the event that interested citizens or organizations provide information which the county clerk believes indicates a need for registration assistance for qualified citizens described in subdivision (c), the county clerk shall make reasonable efforts to recruit deputy registrars who are fluent in a language used by citizens described in subdivision (c) and in English. Such recruitment shall be conducted through the cooperation of interested citizens and organizations and through voluntarily donated public service notices in the media, including newspapers, radio, and television, particularly those media which serve the non-English-speaking citizens described in subdivision (c). Deputy registrars so appointed shall facilitate registration in the particular precincts concerned and shall have the right to register voters anywhere in the county. [] (e) In furtherance of the purposes of this section, the governing board of any county, city, city and county, district, or other public agency, may authorize and assign any of its officers or employees to become deputy registrars of voters and to register qualified citizens on any premises and facilities owned or controlled by such public agencies during the regular working hours of such officers or employees; provided, that with the exception of firemen, and compensation to which said officer or employee may be entitled in payment for the services of such officer or employee as a deputy registrar may be paid by the authority which appointed such officer or employee as a deputy registrar to the public agency which regularly employs such officer or employee. [] (f) It is the intent of the Legislature that no limitation be imposed on the number of persons appointed to act as deputy registrars of voters." (Stats. 1976, ch. 1275, § 12, pp. 5637-5638 repealed and reenacted at Stats. 1994, ch. 920, § 2, pp. 4710-4711 as Elec. Code, § 2103.) Elections Code section 304 provided in 1989: "It is the intent of the Legislature that voter registration be maintained at the highest possible level. The Secretary of State shall adopt regulations requiring each county to design and implement programs intended to identify

qualified electors who are not registered voters, and to register such persons to vote. The Secretary of State shall adopt regulations prescribing minimum requirements for such programs. If the Secretary of State finds that a county has not designed and implemented a program meeting such prescribed minimum requirements, the Secretary of State shall design a program for such county and report the violation to the Attorney General." (Stats. 1976, ch. 1275, § 12, p. 5638 repealed and reenacted by Stats. 1994, ch. 920, § 2, pp. 4711-4712, as Elec. Code § 2105.)

Common Cause is not authority for the proposition advanced by plaintiff that section 14501, subdivision (g) imposes a mandatory duty on defendants' part to provide the statutorily sufficient redemption program. The language in *Common Cause* relied upon by plaintiff here relates to whether Elections Code section 304 permitted the Attorney General to sue to require counties to engage in statutorily mandated voter outreach programs. (*Common Cause v. Board of Supervisors, supra*, 49 Cal.3d at pp. 440-441, 261 Cal.Rptr. 574, 777 P.2d 610.) No similar provision of law is present here. Because the issue presented before us is entirely different, *Common Cause* is not controlling authority on the mandatory duty issue. (*Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1278, 135 Cal.Rptr.2d 654, 70 P.3d 1067 [“ ‘an opinion is not authority for a proposition not therein considered’ ”]; *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1081, 130 Cal.Rptr.2d 892, 63 P.3d 979 [“ ‘ ‘cases are not authority for propositions not considered’ ’ ”].)

Plaintiff also relies on *Californians Against Waste v. Department of Conservation, supra*, 104 Cal.App.4th at pages 320-74 326, 127 Cal.Rptr.2d 905. In *Californians Against Waste*, a nonprofit corporation sought a writ of mandate to compel the department to properly calculate statutory processing fees paid as a recycling incentive. (*Id.* at p. 320, 127 Cal.Rptr.2d 905.) In *Californians Against Waste*, former Associate *637 Justice Conseuelo Maria Callahan identified the issue before the Court of Appeal thusly: "Following 1999 amendments to section 14575 (Stats.1999, ch. 815, § 32; Stats.1999, ch. 817, §§ 6 & 7), the Department [of Conservation] changed the way it calculated the processing fee. Californians Against Waste [], a nonprofit corporation that promotes

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market-based waste-reduction and recycling policies, challenged the Department's reading of section 14575. [Californians Against Waste] maintained the Department was setting processing fees too low, contrary to the language and intent of the Act as amended. The trial court granted [the] petition for writ of mandate, finding that the Department's processing fee calculation employed a "recycling factor" not specifically included in the statute. [¶] On appeal, the Department contends the plain language of the statute supports the Department's formula for calculating the processing fee paid by beverage manufacturers. It argues the approach urged by [Californians Against Waste] and adopted by the trial court is "patently absurd" because it "would ... lead to the creation of surplus funds in accounts unavailable for any of the salutary purposes of the Act." [¶] The interpretation of section 14575 presents a question of law, which we review de novo. (*County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 594, 22 Cal.Rptr.2d 409.) Having considered the plain language of section 14575, and its relationship to the Act as a whole, we agree with the trial court that the Department's reading of section 14575 is erroneous." (*Californians Against Waste v. Department of Conservation, supra*, 104 Cal.App.4th at pp. 319-320, 127 Cal.Rptr.2d 905.) The foregoing was the sole issue before the Court of Appeal in *Californians Against Waste*. There was no issue before the trial court or former Associate Justice Callahan and her colleagues as to whether the statement of legislative purpose in section 14501, subdivision (g) or the provisions of section 14530.6, which allow the Attorney General to represent the department under specified circumstances, gives rise to a private cause of action. Therefore, *Californians Against Waste* is not authority for the proposition that writ review is available to plaintiff or that a private right of action exists under the act. (*Palmer v. GTE California, Inc., supra*, 30 Cal.4th at p. 1278, 135 Cal.Rptr.2d 654, 70 P.3d 1067; *Little v. Auto Stiegler, Inc., supra*, 29 Cal.4th at p. 1081, 130 Cal.Rptr.2d 892, 63 P.3d 979.)

Plaintiff further argues defendants failed to fulfill their section 14501, subdivision (g) duty to provide convenient, efficient, and economical redemption opportunities in that they did not establish certified recycling locations as required by section 14571, subdivision (a). As noted above, section 14571, subdivision (a) provides, "Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone which accepts and pays the refund value ... for all

types of empty beverage containers...." "Convenience zone" is defined in section 14509.4 as, "The area within a one-half mile radius of a supermarket." However, the department has discretion under specified circumstances to *638 increase the size of a convenience zone to within a three-mile radius of a supermarket. (§ 14509.4, subd. (b)(1) & (2).) Moreover, the department has discretion to grant *exemptions* from the requirements**75 of section 14571 as set forth in section 14571.8, subdivision (b), which states in part: "The director may grant an exemption from the requirements of Section 14571 for an individual convenience zone only after the department solicits public testimony on whether or not to provide an exemption from Section 14571. The solicitation process shall be designed by the department to ensure that operators of recycling centers, dealers, and members of the public in the jurisdiction affected by the proposed exemption are aware of the proposed exemption." FN4

FN4. See footnote 2, ante, for the full text of section 14571.8, subdivision (b).

Plaintiff's reliance on section 14571 is unavailing for two reasons. First, with respect to the corporate defendants, plaintiff does not argue section 14571 by itself imposes any direct duty on them to establish certified recycling centers. Instead, plaintiff relies on the purported joint mandatory obligation "to provide convenient, efficient, and economical redemption opportunities" in section 14501, subdivision (g), as the source of a duty on the part of the corporate defendants to establish at least one certified recycling center within every convenience zone. As discussed above, however, section 14501, subdivision (g) does not create any joint mandatory duty to provide recycling opportunities. Therefore, plaintiff cannot rely on section 14571, subdivision (g) to impose on the corporate defendants a duty to establish certified recycling centers. Second, with respect to the department, our Supreme Court has held that a statute creates a mandatory duty sufficient to impose liability on a public entity only when it *requires*, rather than allows, the governmental agency to take a particular action. (*Haggis v. City of Los Angeles, supra*, 22 Cal.4th at pp. 498-499, 93 Cal.Rptr.2d 327, 993 P.2d 983; *Creason v. Department of Health Services, supra*, 18 Cal.4th at pp. 631-633, 76 Cal.Rptr.2d 489, 957 P.2d 1323; *Morris v. County of Marin, supra*, 18 Cal.3d at pp. 907, 910, 136 Cal.Rptr. 251, 559 P.2d 606.) The

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Supreme Court has explained, "It is not enough ... that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. (*Creason v. Department of Health Services* [, *supra*,] 18 Cal.4th [at pp.] 631-633, 76 Cal.Rptr.2d 489, 957 P.2d 1323.)" (*Haggis v. City of Los Angeles*, *supra*, 22 Cal.4th at pages 498-499, 93 Cal.Rptr.2d 327, 993 P.2d 983.) Section 14571, subdivision (a) does not require that the department establish at least one certified recycling center or location within a one-half mile radius of every supermarket. Section 14571, subdivision (a) states, "Except as otherwise provided in this chapter, there shall be..." (Italics added.) The chapter, specifically section 14509.4, subdivision (b)(1) and (2), provides otherwise. Section 14509.4, subdivision (b) provides that the department has discretion to increase a convenience zone otherwise not being served by a certified recycling center or location to within a three-mile radius of a supermarket. (§ 14509.4, subd. (b)(1) & (2).) That is, the department has *639 discretion to require at least one certified recycling center be established within a three-mile radius of a supermarket in a rural region rather than within a one-half mile zone. Moreover, under section 14571.8, subdivision (b), the department has discretion to grant an exemption from the requirements of section 14571; that is, to not require a certified recycling center within a convenience zone at all. No cause of action will lie against the department with respect to the placement of certified recycling centers or locations within convenience zones because the act does not require the department to take a particular**76 action. The department's obligation to perform the function set forth in section 14571 involves the exercise of discretion.

In her reply brief, plaintiff asserts section 14501, subdivision (g), imposing a joint responsibility to provide redemption opportunities, section 14501, subdivision (a), describing redemption opportunities as including "industry operated recycling centers," and various references in the act to "reverse vending machines" (e.g., §§ 14571, subd. (e), (f), (g), & (h), 14520.5, 14572.5), should be construed together to require beverage manufacturers—here, the corporate defendants—to provide reverse vending machines in recycling centers. We need not discuss this argument at length. It is sufficient to note that it relies on section 14501, subdivision (g), a statement of legislative intent, as establishing the joint mandatory obligation. As we have noted, section 14501, subdivision (g) pro-

vides no mandatory duty of the type which can give rise to a right of action.

C. Writ Relief

[3][4][5] The trial court found a writ petition would not lie in the absence of a clear, present duty on defendants' part. Because the pertinent facts are undisputed and the issue is one of statutory interpretation, our review of the trial court's decision is de novo. (*Marshall v. Pasadena Unified School Dist.* (2004) 119 Cal.App.4th 1241, 1253, 15 Cal.Rptr.3d 344; *Catalina Investments, Inc. v. Jones* (2002) 98 Cal.App.4th 1, 6, 119 Cal.Rptr.2d 256; *Beverly v. Anderson* (1999) 76 Cal.App.4th 480, 483-484, 90 Cal.Rptr.2d 545.) Plaintiff's writ petition was properly denied. Pursuant to Code of Civil Procedure section 1085, subdivision (a), "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." Under Code of Civil Procedure section 1086: "The writ must issue in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested." The Supreme Court has held: "The writ will *640 issue against a county, city or other public body or against a public officer. (*Housing Authority v. City of L.A.* (1952) 38 Cal.2d 853, 869-871, 243 P.2d 515, cert. den. (1952) 344 U.S. 836, 73 S.Ct. 46, 97 L.Ed. 651; *Hawthorn v. City of Beverly Hills* (1952) 111 Cal.App.2d 723, 731, 245 P.2d 352.) However, the writ will not lie to control discretion conferred upon a public officer or agency. (*Lindell Co. v. Board of Permit Appeals* (1943) 23 Cal.2d 303, 315, 144 P.2d 4; *Faulkner v. Cal. Toll Bridge Authority* (1953) 40 Cal.2d 317, 326, 253 P.2d 659.) Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent (*Faulkner v. Cal. Toll Bridge Authority*, *supra*; *Sherman v. Quinn* (1948) 31 Cal.2d 661, 664, 192 P.2d 17; *Browning v. Dow* (1923) 60 Cal.App. 680, 682, 213 P. 707); and (2) a clear, present and beneficial right in the petitioner to the performance of that duty (*Parker v. Bowron* (1953) 40 Cal.2d 344, 351, 254 P.2d 6). (See generally

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3 Witkin, Cal. Procedure (1954), Extraordinary Writs, § 40 et seq., pp. 2520 et seq.)” (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491, 96 Cal.Rptr. 553, 487 P.2d 1193, fn. omitted; accord, *Santa Clara County Counsel Attys. Assn. v. Woodside*, supra, 7 Cal.4th at pp. 539-540, 28 Cal.Rptr.2d 617, 869 P.2d 1142; *Taylor **77 v. Board of Trustees* (1984) 36 Cal.3d 500, 507, 204 Cal.Rptr. 711, 683 P.2d 710; *Cooper v. Estero Mun. Imp. Dist.* (1969) 70 Cal.2d 645, 650, 75 Cal.Rptr. 777, 451 P.2d 417.)

In *Younger*, for example, the Supreme Court found a clear duty was imposed by law upon the county defendants because a statute unequivocally required a particular action: “[Government Code] section 66801, article VII, subdivision (a) provides that ‘[e]ach county in California shall pay the sum allotted to it by the agency from any funds available therefor....’ [Italics added by *Younger*.]” (*People ex rel. Younger v. County of El Dorado*, supra, 5 Cal.3d at p. 491, 96 Cal.Rptr. 553, 487 P.2d 1193.) Similarly, in *Woodside*, the Supreme Court held a Government Code section requiring the county to meet and confer with an employee association in good faith created a clear and present duty to do so. (*Santa Clara County Counsel Attys. Assn. v. Woodside*, supra, 7 Cal.4th at p. 540, 28 Cal.Rptr.2d 617, 869 P.2d 1142.) On the other hand, absent a clear duty imposed by law such as that in *Younger* or *Woodside*, mandamus is not a proper vehicle for resolution of the asserted grievance. (*Cooper v. Estero Mun. Imp. Dist.*, supra, 70 Cal.2d at p. 650, 75 Cal.Rptr. 777, 451 P.2d 417.) In *Cooper*, the plaintiff failed to allege the defendants had any duty to act in a particular manner. (*Id.* at p. 650, 75 Cal.Rptr. 777, 451 P.2d 417.)

Plaintiff asserts section 14501, subdivision (g) imposes a mandatory duty on defendants to jointly provide convenient, efficient, and economical redemption opportunities. Further, plaintiff contends section 14571 entails a mandatory requirement that a convenience zone contain at least one certified recycling center or location. As discussed above, no duty arises under section 14501, subdivision (g). We agree with the trial court that section 14501, subdivision (g) is a general statement of legislative intent that does not *641 impose any affirmative duty that would be enforceable through a writ of mandate. (See *Municipal Court v. Superior Court* (1993) 5 Cal.4th 1126, 1132, 22 Cal.Rptr.2d 504, 857 P.2d 325; *Common Cause of California v. Board of Supervisors*, supra, 49 Cal.3d

at p. 444, 261 Cal.Rptr. 574, 777 P.2d 610.) Also as discussed above, the department has discretion to exempt convenience zones from the certified recycling center or location requirement in section 14571. (§ 14571.8.) A writ of mandate will not lie to control the department's discretion as to establishing certified recycling centers or locations within convenience zones. (*People ex rel. Younger v. County of El Dorado*, supra, 5 Cal.3d at p. 491, 96 Cal.Rptr. 553, 487 P.2d 1193; *Lindell Co. v. Board of Permit Appeals*, supra, 23 Cal.2d at p. 315, 144 P.2d 4; *Faulkner v. Cal. Toll Bridge Authority*, supra, 40 Cal.2d at p. 326, 253 P.2d 659.) Absent a clear, present duty on defendants' part, the trial court properly denied plaintiff's mandate petition.

D. The Unfair Competition Claim

[6] Plaintiff argues that even in the absence of a mandatory duty or a private right of action under section 14501, subdivision (g), she has a right to bring an unfair competition claim under Business and Professional Code section 17200. Plaintiff alleges the corporate defendants engaged in fraudulent, unlawful, and unfair business practices and conduct in failing to provide sufficient convenient, efficient, and economical redemption opportunities in violation of section 14501, subdivision (g), resulting in an unacceptably low recycling rate. Plaintiff's reply brief states, “Plaintiff concedes that [section] 14501(g) is the mainspring of [her] [unfair competition **78 law] claim....” According to plaintiff, this unacceptably low recycling rate violated the Legislature's intent in adopting the act. Plaintiff further alleges defendants deceived consumers into believing such opportunities would be available. The trial court ruled: courts will abstain from unlawful competition claims in the face of a comprehensive administrative process which can address the issue at hand; it therefore should abstain from involving itself in an area addressed by “a comprehensive legislative scheme designed to improve recycling in California”; and it should not “become involved in determining how to meet complex recycling goals the Legislature has entrusted to the [department].” The trial court properly exercised its discretion to abstain from employing the remedies available under the unfair competition law.

[7] It is well-established that a court of equity will abstain from employing the remedies available under the unfair competition law in appropriate cases. As the

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Court of Appeal held in a case involving the health care finance industry: “[B]ecause the remedies available under the [unfair competition law], namely injunctions and restitution, are equitable in nature, courts have the discretion to abstain from employing them. Where [an unfair competition law] action would drag a court of equity into an area of complex economic [or similar] policy, equitable abstention is appropriate. In such *642 cases, it is primarily a legislative and not a judicial function to determine the best economic policy.” (*Desert Healthcare District v. PacifiCare, FHP, Inc.* (2001) 94 Cal.App.4th 781, 795-796, 114 Cal.Rptr.2d 623; accord, *People ex rel. Dept. of Transportation v. Naegele Outdoor Advertising Co.* (1985) 38 Cal.3d 509, 523, 213 Cal.Rptr. 247, 698 P.2d 150 [billboards]; *Crusader Ins. Co. v. Scottsdale Ins. Co.* (1997) 54 Cal.App.4th 121, 137-138, 62 Cal.Rptr.2d 620 [insurance industry]; *Wolfe v. State Farm Fire Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 564-565, 53 Cal.Rptr.2d 878 [earthquake insurance]; *California Grocers Assn. v. Bank of America* (1994) 22 Cal.App.4th 205, 218-219, 27 Cal.Rptr.2d 396 [bank service fees]; *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284, 1301-1302, 22 Cal.Rptr.2d 20 [health maintenance organization third party liability policies]; *Larez v. Oberti* (1972) 23 Cal.App.3d 217, 221-222, 100 Cal.Rptr. 57 [domestic farmworker protection from illegal alien competition]; *Cobos v. Mello-Dy Ranch* (1971) 20 Cal.App.3d 947, 951, 98 Cal.Rptr. 131 [same]; *Diaz v. Kay-Dix Ranch* (1970) 9 Cal.App.3d 588, 599, 88 Cal.Rptr. 443 [same]; see *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 596-597 fn. 2, 71 Cal.Rptr.2d 731, 950 P.2d 1086 [dis. opn. of Brown, J.] [sale of cigarettes to minors].)

In this case, the complex statutory arrangement of requirements and incentives involving participants in the beverage container recycling scheme is to be administered and enforced by the department consistent with the Legislature's goals. For the court at this point to issue restitution and disgorgement orders against the corporate defendants would interfere with the department's administration of the act and regulation of beverage container recycling and potentially risk throwing the entire complex economic arrangement out of balance. The public's need for opportunities to recover its cash redemption value funds and to conveniently recycle its beverage containers is not so great as to warrant judicial interference in the administrative scheme designed to address those needs at

this point.

E. Declaratory Relief

[8] Plaintiff argues she has a right to seek declaratory relief as to the construction**79 of the act and mandamus to compel its enforcement. We disagree. As discussed above, section 14501, subdivision (g) does not impose any mandatory duty on defendants to act. Therefore, plaintiff cannot state a cause of action for declaratory relief as to defendants' rights, duties, and responsibilities under section 14501, subdivision (g).

*643 IV. DISPOSITION

The judgment is affirmed. Defendants, the Department of Conservation, Darryl W. Young, Jim Ferguson, Anheuser-Bush, Inc. and Miller Brewing Company, are to recover their costs on appeal from plaintiff, Ferial Shamsian.

ARMSTRONG and KRIEGLER, JJ., concur.

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(Cite as: 37 Cal.App.3d 345)

CLAWRENCE STEWART, Plaintiff and Respondent,
v.
SAN MATEO JUNIOR COLLEGE DISTRICT et al.,
Defendants and Appellants
Civ. No. 32087.

Court of Appeal, First District, Division 1, California.
February 20, 1974.

SUMMARY

In a mandamus proceeding, the trial court adjudged the dismissal of a probationary junior college teacher to have been invalid. The teacher had been notified on or before March 15 of the then current school year that he would not be employed for the ensuing school year. On the teacher's timely request, a hearing was held and proceedings were taken by the district which culminated in the district's final determination and notice to the employee on June 23, that he would not be reemployed. (Superior Court of San Mateo County, No. 162018, Melvin E. Cohn, Judge.)

The Court of Appeal affirmed, noting the provisions of Ed. Code, § 13443, that a district's final decision not to reemploy a probationary teacher "shall be effective on May 15 of the year the proceeding is commenced," that notice "shall be given no later than May 15," and that if it is not given by that date "the employee shall be deemed reemployed for the ensuing school year." It regarded those provisions as establishing a jurisdictional deadline, and it held that the Legislature so intended. An obvious purpose of the statute, the court reasoned, is to allow a teacher, whose employment will be ended with the school year's termination, timely final notice of that fact in order that he may seek other employment in his profession during the coming school year. (Opinion by Elkington, J., with Molinari, P.J., and Sims, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Schools § 101--Dismissal--Probationary Teachers. The trial court properly adjudged the dismissal of a

probationary junior college district teacher to have been invalid under Ed. Code, § 13443, where, after receiving the initial notice on or before March 15 of the then current school year that he would not be employed for the ensuing year, the teacher had requested a hearing as provided by the statute, and where the district did not thereafter make its final determination not to reemploy or give notice of that determination to the employee until June 23. The provisions of the statute that the final decision "shall be effective on May 15 of the year the proceeding is commenced," that notice "shall be given no later than May 15," and that, if it is not given by that date "the employee shall be deemed reemployed for the ensuing school year," fix a jurisdictional deadline that may not be extended even though the district may have acted with reasonable diligence under the circumstances.

[See Cal.Jur.2d, Rev., Schools, § 495 et seq.]

COUNSEL

Keith C. Sorenson, District Attorney, and James M. Parmelee, Deputy District Attorney, for Defendants and Appellants.

Levy & Van Bourg, Victor J. Van Bourg and Stewart Weinberg for Plaintiff and Respondent.

ELKINGTON, J.

Lawrence Stewart was a probationary teacher employed by the San Mateo Junior College District. As permitted by Education Code section 13443 he was, on or before March 15, 1971, given notice that he would not be employed by the district for the ensuing school year. Stewart timely requested a hearing as provided by section 13443, subdivision (b). Thereafter a hearing was held and proceedings taken by the district which culminated in the district's final determination and notice to Stewart, June 23, 1971, that he would not be reemployed.

Education Code section 13443, subdivision (d), provides that the district's *final decision not to reemploy the teacher after his request for a hearing*, "shall be effective on May 15 of the year the proceeding is commenced." The section then provides: *347

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“(e) Notice to the probationary employee by the governing board [here the district] that his service will not be required for the ensuing year, *shall be given no later than May 15.*” (Italics added.)

“(h) In the event the governing board does not give notice provided for in subdivision (e) of this section *on or before May 15*, the employee shall be deemed reemployed for the ensuing school year.” (Italics added.)

(1) The superior court, on Stewart's petition for a writ of mandate, ordered and adjudged his dismissal to have been invalid. Stewart had contended, and the trial court concluded, “That the May 15 notice requirement as more particularly set forth in subparagraphs (e) and (h) of section 13443 of the Education Code is jurisdictionally mandatory and not directory”

The district's appeal is from the order and judgment of the superior court granting a peremptory writ of mandate.

The trial court's conclusion is supported by *Ward v. Fremont Unified Sch. Dist.* (1969) 276 Cal.App.2d 313 [80 Cal.Rptr. 815]. Although section 13443 was then cast in somewhat different language (we are concerned with the later amendment of 1970), it also provided in substance that the teacher sought to be dismissed be so advised “no later than March 15,” after which he could request and obtain a hearing. The statute allowed two months for the hearing and related proceedings, and then provided: “(h) In the event the governing board does not give notice [the final notice of dismissal] provided for in subdivision (a) of this section *on or before May 15*, the employee shall be deemed reemployed for the ensuing school year.” (Italics added.) The court (p. 322) concluded that the statute fixed a “jurisdictional deadline” of May 15 after which the district “could not act to terminate Ward's services.” *Ward v. Fremont Unified Sch. Dist.* was approved and followed in *Shaughnessy v. Wilson School Dist.*, 29 Cal.App.3d 742, 750 [105 Cal.Rptr. 707].

We accept the reasoning and authority of *Ward v. Fremont Unified Sch. Dist.* as applicable to the issue before us.

We have considered the district's contention that the language of the section's subdivision (c) “In the event

a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with [the Government Code's chapter relating to administrative hearings, sections 11500-11529, inclusive]” must prevail over that of its subdivisions (e) and (h). But in accordance with established law the specific provisions of subdivisions (e) and (h) must prevail over the more *348 general procedures of the Government Code. (*In re Williamson*, 43 Cal.2d 651, 654 [276 P.2d 593]; *Mitchell v. County Sanitation Dist.*, 164 Cal.App.2d 133, 141 [330 P.2d 411].)

Further, there can be little doubt that the Legislature's intent was that May 15 be a deadline for finally notifying the teacher of his dismissal. An obvious purpose of the statute is to allow a teacher, whose employment will be ended with the school year's termination, timely final notice of that fact in order that he may seek other employment in his profession during the coming school year. Any delayed notice would seriously and unfairly curtail his opportunities to compete for employment elsewhere.

We have also considered the dicta of *Feist v. Rowe*, 3 Cal.App.3d 404, 410 [83 Cal.Rptr. 465], where commenting on *Ward v. Fremont Unified Sch. Dist.* (276 Cal.App.2d 313), the court stated: “The application of the rule laid down in that case is to place local school boards, alone of public employers, at the peril of being perfect in the procedural handling of dismissal hearings of probationary teachers, regardless of the soundness of the reasons for dismissal.” But we believe that any readjustment of the period allowed for the necessary administrative procedures should be made by the Legislature, not by the courts.

Our holding, and that of *Ward v. Fremont Unified Sch. Dist.*, leads to no absurd consequence, as suggested. The statute under consideration, allowing but two months for all proceedings after request for a hearing seems a reasonable attempt to accommodate legislative concern for the teachers' welfare with the time-taking requirements of administrative procedures. And we observe that the statute permits the district to commence proceedings for a teacher's dismissal *before* March 15, thus allowing more time for administrative action.

It may be that the district, as contended, acted with reasonable diligence throughout the procedures following Stewart's request for a hearing. But no citation

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of authority is necessary in pointing out that reasonable diligence does not serve to extend a "jurisdictional deadline" fixed by statute.

For the reasons stated, the "order and judgment" entered November 8, 1971, is affirmed.

Molinari, P. J., and Sims, J., concurred. *349

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END OF DOCUMENT

FAQs on Minimum Qualifications (MQs)

The following list of Frequently Asked Questions (FAQs) has been compiled to assist individuals in better understanding and interpreting the rules and regulations governing the minimum qualifications (MQs) for faculty and administrators in the California Community College system. The FAQs were collaboratively developed with members of the Standards and Practices Committee of the State Academic Senate and staff from the Chancellor's Office of the California Community Colleges.

Q#1: Who has the responsibility for establishing and maintaining the Disciplines List and enforcing the regulations relating to the MQs?

A. The Academic Senate for California Community Colleges, in conjunction with the Chancellor's Office, shares that responsibility. The Academic Senate is responsible for reviewing and revising the Disciplines List. A list of Academic Senate papers on minimum qualifications and the Disciplines List is included at the end of this document. An overview of the disciplines list process can be found at:

<http://www.asccc.org/Archives/DisciplineList/DisciplinesList.htm>

Staff from the Chancellor's Office of the California Community Colleges has the responsibility of ensuring that colleges comply with the regulations governing MQs. The regulations can be found by accessing the "Minimum Qualifications for Faculty and Administration in California Community Colleges" document posted at:

http://www.cccco.edu/Portals/4/minimum_qualifications_jan2008.doc

Q#2: Can a California Community College Credential be used to apply for a faculty position at a California Community College?

A: Yes. The issuance of Community College credentials was discontinued in 1990, but lifetime credentials issued before 1990 are "grandfathered" into the MQ process and accepted as meeting the MQs for faculty positions.

As a result of Assembly Bill 1725 (1988), MQs are now determined on academic preparation (for both master's and non-master's disciplines) and relevant work experience (for non-master's disciplines) when qualifying individuals for faculty positions---according to the Disciplines List and local equivalency processes.

Q#3: Can a Community College Teaching Certificate issued by a four-year institution (several CSU campuses offer such credentials) be used to apply for a faculty position at a California Community College?

No. The Community College Teaching Certificate, while commendable, has no bearing on meeting the MQs for faculty in the community colleges.

Q#4: What if someone has a single-subject discipline credential, has taught high school in that discipline for 14 years, and recently received a Master's in Educational Administration. Would he/she qualify to teach part-time in the discipline?

A: No. The single-subject and multiple-subject credentials are issued by the California Commission on Teacher Credentialing and are only valid within the K-12 public education system. To be eligible to teach (full- or part-time) that discipline at any of the California community colleges, a person needs to meet the requirements for the discipline as noted in the Disciplines List. The credential, high school teaching experience and the master's degree (not in a discipline subject) could be used as factors in determining equivalency to the requirements of a discipline listed in the Disciplines List. Equivalent qualifications are

determined by faculty representing their academic senate at the local level and approved by the local governing board

Q#5: Are the MQs for part-time faculty different than those for full-time faculty?

A. No. The MQs for all faculty members are the same, whether they are full-time or part-time. Note also that MQs are established for a discipline and not a single course. A part-time faculty member, when hired by the college, is hired to teach in the discipline under which a particular course has been assigned. Therefore, it is important that the college ensures the candidate is meeting the MQs in the discipline when hiring both full and part-time faculty.

Q#6: What happens when an academic degree held by an applicant for a faculty position is not listed in the Disciplines List?

A: One of two processes can occur---determination of an equivalency to an existing discipline, or proposal of a revision to the Disciplines list, either by proposing a new discipline or adding a degree to an existing discipline.

For any degree that is not currently covered in the Disciplines List, follow the guidelines for establishing an equivalency to a discipline as provided in Title 5, Section 53410, Minimum Qualifications for Instructors of Credit Courses, Counselors, and Librarians, which reads as follows:

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.

Title 5 states that, in addition to a master's degree in the specific discipline, a master's degree in a "reasonably related" discipline can satisfy the MQs requirement. Since the Disciplines List does not currently include the degree of the applicant, the district is able to determine the equivalent academic degree that may also fulfill the MQ to the discipline listed in the Disciplines List.

Revisions to the Disciplines List (addition of a new discipline or addition/deletion of an academic degree to an existing discipline) are based upon the recommendation of the Academic Senate to the Board of Governors. Consult the guidelines as listed in the Disciplines List Process of the Academic Senate at:

<http://www.asccc.org/Archives/DisciplineList/DisciplinesList.htm>

Q7: What are good practices in determining an equivalency to the MQs for a discipline?

A: To maintain the academic integrity of the community colleges and their faculty, equivalency to those minimum qualifications for hire must be granted with careful consideration. The Academic Senate has the following recommendations (from Equivalence to the Minimum Qualifications, 2006):

- Equivalency must be at least equivalent to the minimum qualifications for a discipline.
- Equivalency must be determined primarily by discipline faculty.

- Equivalency processes for part-time faculty and “emergency hire” should be no different from equivalency for full-time faculty.
- Local senates must ensure that their district and college policies and processes do not allow for single-course equivalencies.
- Academic senates should assure consistency of the equivalency process.
- Equivalency decisions should be based on direct evidence of claims (e.g., transcripts, publications, and work products).
- Claims of equivalence must include how both general education and specialization are met.
- Human resources offices should NOT screen for equivalency.
- Local senates must never allow equivalency to be delegated to administration or classified staff.
- Equivalency policies at each district and college should be reviewed every few years.
- Criteria for the acceptance of eminence as a means to establish equivalency must be clearly defined in hiring policy.
- Once the local equivalency process has reached a recommendation regarding an individual applicant, Education Code §87359(a) requires that the governing board include action on the equivalency as part of its subsequent hiring action.

Q#8: Is an equivalency granted by one district transferable to another district?

A. No. Each district is allowed to establish its own equivalency minimum qualifications for each discipline taught in its jurisdiction. Section 53430 of Title 5 states that:

“A district may hire a person who possesses qualifications different from, but equivalent to, those listed on the disciplines list, according to criteria and procedures agreed upon by the governing board and the academic senate.”

Q#9: Does an equivalency granted by one college in a multi-college district apply to all the colleges in that district?

Yes. An equivalency established by one college in a multi-college district is applicable to all colleges in that district. In order to maintain consistency, colleges in multi-college districts are encouraged to work together on a common equivalency process.

Q#10: What are the parameters by which a district would use eminence when determining whether an applicant for a faculty position meets the MQs for the listed position?

A: The current MQs regulations and disciplines list are silent in defining or referencing the term “eminence.” The State Academic Senate’s Standards and Practices Committee is currently in the process of developing resources to assist local colleges in making an eminence determination. Access the current paper on minimum qualifications and equivalencies at

http://www.asccc.org/Publications/Papers/Equivalence_2006.html

Q#11: Isn’t the course designation under the TOP code the same as the disciplines in the Disciplines List?

No. Colleges need to be cautious that the course designation under the Taxonomy of Programs (TOP) is not confused with the Disciplines List developed in establishing MQs for faculty to meet when being hired for a position. TOP is a system of numerical codes used at the state level to collect and report information on programs and courses in different colleges throughout the state that have similar outcomes. It is used for purposes other than identifying disciplines for the purposes of hiring and assignment of faculty.

Q#12: How do I go about having a discipline included on the disciplines list?

A: The Disciplines List is updated every two years through a collaborative process involving the State Academic Senate and the Chancellor's Office of the California Community Colleges. An overview of the process can be found on the following web page:

<http://www.asccc.org/Archives/DisciplineList/DisciplinesList.htm>

Q#13: Are the MQs for distance education faculty different those for a traditional classroom instructor?

A. No. The MQs for all faculty members, regardless of the course delivery mode, are the same. MQs are established for a discipline and not the specific mode of delivery. A faculty member is hired to teach courses in a discipline, regardless of the technological modality by which the course content is delivered. Colleges may establish desirable qualifications for faculty to have in order to teach courses as distance education; however, the MQs remain unchanged based solely on the mode of delivery.

Q#14: Are the MQs for instructors of noncredit courses the same as for instructors of credit instruction.

Not necessarily. The MQs for instructors of noncredit courses are listed in section 53412 of Title 5. Many of the MQs for noncredit courses are the same as the MQs for credit instruction, but there are important exceptions that are noted in this section of Title 5.

Q#16: What is the difference between an FSA (Faculty Service Area) and the Disciplines List (MQs)?

A. The Disciplines List and Faculty Service Areas serve two completely distinct purposes--- one for hiring and one for layoffs. In order to be hired as a faculty, one must meet the minimum qualifications (MQs) for one of the disciplines listed in the Disciplines List. The MQs in the Disciplines List are established through the Education Code and Title 5 and apply to all faculty throughout the state. Faculty Service Areas are established by each district and serve as the basis for making decisions in the event of a layoff or reduction in force (RIF). Some districts construct their FSAs by designating each discipline listed in the Disciplines List as an FSA. Other districts combine several disciplines into an FSA. And other districts combine all disciplines into one single FSA. Upon hire, a faculty member is placed in the FSA that includes the discipline for their position. If your FSA includes more than one discipline, it does not mean that you are qualified for service in each of the disciplines listed in that FSA, but only for those in which you meet the MQs.

Q#17: Is it possible to teach at a community college as a faculty intern?

A. Yes. The governing board of any community college district may establish a faculty internship program. A full description of the requirements and MQs that apply in this type of a situation can be found in Sections 53500 through 53502 of Title 5, California Code of Regulations.

These sections of the regulation can be found by accessing the Minimum Qualifications for Faculty and Administration in the California Community Colleges document posted at:

http://www.cccco.edu/Portals/4/minimum_qualifications_jan2008.doc

Q#18: Does the Coaching discipline listed under the section "Disciplines in Which a Master's Degree is not Generally Expected or Available" permit an individual who is hired as a coach, and does not possess a master's degree, to teach physical education classes?

A: No. The discipline of coaching permits an individual to coach in a sport, but not to teach the activity classes in a sport. For example, an individual with the coaching MQ could coach the swim team, but would not have the MQs to teach swimming classes---those courses would most likely have been assigned to the discipline of Physical Education (which requires a master's degree) by the college curriculum committee.

Q#19: If someone earned a professional degree, such as J.D., M.D., L.L.B., D.V.M, D.O., or other recognized degree, what courses can that individual teach at the community college?

A: The MQ to teach in the Law discipline within the community colleges is the possession of a J.D. or L.L.B. So, an individual with a J.D. or L.L.B. could teach any course that has been assigned the discipline of Law by the curriculum committee. Additionally, the MQ guidelines note that courses in aspects of law for applications to a particular discipline may be classified, for minimum qualifications purposes, in the discipline of the application - i.e., Business Law.

A person with an M.D. or D.V.M or D.O. would not be recognized as meeting the MQs for the discipline of Biology simply through his or her professional degree coursework. The college equivalency committee would need to examine the person's pre-professional degree coursework to see if the total amount of coursework was equivalent to the MQs for the Biology discipline.

Q#20: Is it true that in order to teach a class listed under two disciplines that the instructor only has to be qualified in ONE of the disciplines to teach it, not both. For example, if HIST 177 and ECON 177 are cross-listed, then the instructor needs a master's in History OR Economics?

A: Yes. Some courses may be appropriately assigned to more than one discipline. For example, a course entitled "Economic History of the United States" may be appropriately placed in both the *economics* and *history* disciplines. Such a placement means that a faculty member with minimum qualifications in *either* discipline would be qualified to teach this course, provided that he or she also possesses any additional qualifications established by the governing board in conjunction with its academic senate.

Q#21: What is the Interdisciplinary Studies discipline? Does that mean that anyone can teach a course using that discipline?

A: No. Some courses may not clearly fall within a single discipline, but must combine the academic preparation from two or more disciplines to such a degree that they need to be taught by someone with some preparation in the constituent disciplines. These courses are designated as *interdisciplinary*. The entry for Interdisciplinary Studies is as follows:

Master's in the Interdisciplinary area **OR**

Master's in one of the disciplines included in the interdisciplinary area **and** upper division or graduate course work in at least one other constituent discipline[s].

Therefore the *interdisciplinary* designation requires more specialized minimum qualifications than courses cross-listed under two or more disciplines. Someone who has a master's degree in one of its component disciplines and upper division or graduate course work in at least one of the

other constituent disciplines is also eligible to teach this course (exactly how much coursework in a second discipline is not specified in the Disciplines List). Agreement on qualifications to teach any such course should be made by the college curriculum committee and based on the course outline of record.

Q#22: Can someone with a degree from a foreign country teach at a community college?

A: Possibly. Within the United States, no government agency monitors the establishment of foreign credential evaluation services. Prior to becoming employed as an instructor with any California community college, the college would need to have an evaluation conducted of the education and degree completed at the foreign college/university to inform the equivalency process. The community college would generally refer transcripts from the foreign college/university to an organization that evaluates foreign credentials.

You can access the full document specifying the California Community Colleges' Minimum Qualifications for Faculty and Administrators (commonly known as the **Disciplines List**) by going to the following URL:

http://www.cccco.edu/Portals/4/minimum_qual_jan2008.doc

This FAQ will be reviewed on a regular basis by the Academic Senate and the Chancellor's Office.

Academic Senate documents on Minimum Qualifications and the Disciplines List process:

Disciplines List Review Process. (adopted Fall 2004).

<http://www.asccc.org/Publications/Papers/DisciplinesListReview2004.html>

Equivalence to the Minimum Qualifications. (adopted Fall 2006).

http://www.asccc.org/Publications/Papers/Equivalence_2006.html

Qualifications For Faculty Service In The California Community Colleges: Minimum Qualifications, Placement Of Courses Within Disciplines, And Faculty Service Areas. (adopted Spring 2004).

<http://www.asccc.org/Publications/Papers/QualificationsFacultyService.htm>



Disciplines List

Every two years the Academic Senate for California Community College conducts a review of the Disciplines List, which establishes the minimum qualifications for the faculty of California community colleges. It is time to once again begin the formal review of the Disciplines List, which establishes the minimum qualifications for the faculty of California Community Colleges.

- [Disciplines List Letter](http://asccc.org/sites/default/files/Enclosure1_DisciplinesListLetter_2-22-2011.doc) (http://asccc.org/sites/default/files/Enclosure1_DisciplinesListLetter_2-22-2011.doc)
- [Attachment 1: Disciplines Review Summary](http://asccc.org/sites/default/files/Enclosure2_DisciplineListProposal_Process.doc) (http://asccc.org/sites/default/files/Enclosure2_DisciplineListProposal_Process.doc)
- [Attachment 2: Discipline List Process](http://asccc.org/sites/default/files/Enclosure3_FAQs_MinimumQualifications_September2008.doc) (http://asccc.org/sites/default/files/Enclosure3_FAQs_MinimumQualifications_September2008.doc)
- [Attachment 3: FAQs on Minimum Qualifications](http://asccc.org/sites/default/files/Enclosure4_MinimumQualifications_2010.pdf) (http://asccc.org/sites/default/files/Enclosure4_MinimumQualifications_2010.pdf)

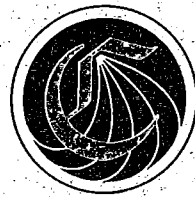
MINIMUM QUALIFICATIONS FOR FACULTY AND ADMINISTRATORS IN CALIFORNIA COMMUNITY COLLEGES

This eighth edition of Minimum Qualifications for Faculty and Administrators in California Community Colleges is an update of the disciplines lists including those adopted by the Board of Governors of the California Community Colleges at their regularly scheduled meeting on November 2, 2009. [Minimum Qualifications for Faculty and Administrators in California Community Colleges \(PDF\)](http://asccc.org/sites/default/files/MinimumQualifications_2010.pdf) (http://asccc.org/sites/default/files/MinimumQualifications_2010.pdf)

For more information or to submit input about the discipline proposals currently being vetted please send to the following: disciplineslist@asccc.org
(<mailto:disciplineslist@asccc.org>).

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Agenda



Board Of
Governors

California
Community
Colleges

September 14-15, 1989
Hyatt Regency of Sacramento
1209 L Street
Sacramento, CA 95814

**AB 1725: BOARD CERTIFICATION
NECESSARY TO TRIGGER PHASE I OF
REFORM**

11

First Reading, Action Scheduled

Background

While a few of the reforms in AB 1725 became effective on January 1, 1989, most are to be phased in as preliminary steps are completed and as funding becomes available. On the matter of employment reforms, AB 1725 was designed to recognize the enormous amount of preparatory work that districts must undertake in order to carry out these sweeping new requirements. Accordingly, the bill was constructed so that most employment provisions would be implemented on July 1, 1990, or when the Board of Governors certified that adequate funding has been provided for "Phase I" of reform, *whichever was later*. In other words, the earliest these employment reforms can be triggered is July 1, 1990, and in order for this to happen, the Board must certify that adequate funding has been provided for Phase I. (A more-detailed discussion of the trigger mechanism will be found in the Appendix to this agenda item.)

Analysis

With \$70 million having just been appropriated for program improvement for 1989-90, it is now possible for the various Phase I reforms to become mandatory with regard to implementation, either on designated dates or when the Board certifies that adequate funding has been provided. Unfortunately, drafting errors in AB 1725 make it possible for several employment reforms - e.g., sunseting of credentials, requirements to evaluate part-timers and provide for peer review evaluation, and establishing faculty service areas, among others - to become operative earlier than the intended July 1, 1990 date. When these reforms were enacted in various parts of the *Education Code*, some inadvertently were not accompanied with language that make them operative on July 1, 1990. Consequently, under Section 70 of the bill, they become mandatory with regard to implementation when the Board certifies that adequate funding has been provided for Phase I of reform. Because the money has been legislatively appropriated for 1989-90 (although none of this money has yet been allocated to the districts), the Board could determine that the legislative

appropriation "provided" the money, and thus make the certification at any time. Such action would trigger the reforms earlier than intended. Originally, it was thought that legislation might be necessary to correct these drafting errors. However, staff has since determined that the matter may be addressed through administrative action by the Board.

This item presents, for Board action, a certification that adequate funding has been provided for Phase I of reform. The effective date for this certification is established as June 30, 1990, the date when final allocations of the first \$70 million of reform funds will have been provided to districts. With this designated effective date for certification, districts can complete major preparatory work during 1989-90, enabling Phase I reforms, particularly those related to employment, to be implemented, as intended, on July 1, 1990.

The aspects of this proposed certification, including the June 30, 1990 effective date, have been discussed in consultation since early July, and the proposal has received favorable review at all stages. At its July meeting, the Board was apprised of this matter and informed that an action item would be forthcoming at its September meeting.

Recommended Action

That the Board of Governors adopt the following certification of adequate funding of reforms under Phase I:

CERTIFICATION

In accordance with subsection (d) of Section 70, of Chapter 973 of the Statutes of 1988, the Board of Governors certifies that, effective June 30, 1990, adequate funding will have been provided to community college districts for Phase I of transitional program improvement and for applicable state mandates, as authorized in Section 84755 of the *Education Code*. By June 30, 1990, therefore, community college districts, pursuant conditions and certifications regarding the receipt of program improvement funds for 1989-90, shall have completed necessary work to implement Sections 27 to 30, inclusive, and Sections 51 to 56, inclusive, of Chapter 973 of the Statutes of 1988; and on July 1, 1990, said provisions shall become mandatory with regard to implementation and ongoing administration by community college districts.

Staff Presentation: Thomas Nussbaum, Vice Chancellor
Legal Affairs and General Counsel

APPENDIX

A Closer Look at the Trigger Mechanism of AB 1725

In providing the blueprint for major changes in the community colleges, AB 1725 was developed at a time when the State had insufficient resources to provide full funding for reform. The bill was also developed with the understanding that its various provisions would have to be implemented over time. It was recognized that sweeping changes could not be completed overnight, and that districts would need time to develop local policies, procedures, and structures for carrying out the specifics of the reforms, many of which are to be developed with the participation of faculty.

Thus, as AB 1725 was put together, a clear intent emerged that two important conditions had to occur before the community colleges could be held accountable for the full implementation of reform:

1. The reforms themselves must have been funded; and
2. Districts must have had a reasonable opportunity to develop those local policies, procedures, and implementing structures necessary to carry out the reforms.

Without funding, and without an opportunity to carry out the necessary preparatory work, the districts could not reasonably be expected to fully implement reform.

Of all the changes in AB 1725, those regarding employment are the most major. The bill brings to an end the era of K-12 employment practices that governed the community colleges. Credentialing, with its standards for employment determined by the Legislature, is replaced by a structure that vests both the Board of Governors and local districts (and particularly their faculties), with authority to establish and apply policy. At a minimum, the following steps are required to fully implement this new structure:

1. The Board of Governors must establish the minimum qualifications that will be used in lieu of credentials;
2. The Board must adopt a list of disciplines that will be used in lieu of the subject matter areas for credentials;
3. Local governing boards must establish mechanisms for screening all prospective employees to insure that they meet minimum qualifications; and

4. Local governing boards must establish methods and procedures for determining whether individuals who do not meet the minimum qualifications have qualifications that are "at least equivalent."

In addition to this work, AB 1725 also requires districts to establish local "hiring criteria" that complement and go beyond the system's minimum qualifications.

Even more fundamental changes are called for in the area of faculty and staff evaluation. All part-time instructors will now be evaluated. In addition, districts are to implement "peer review" on a departmental or divisional basis. To accomplish this change will involve collective bargaining negotiations as well as the involvement of the local academic senates.

Finally, all faculty must be assigned to "faculty service areas" that identify and control their teaching assignments. Before this can be done, districts must work with their collective bargaining representatives and academic senates to establish the various faculty service areas that will be used within the district.

Clearly, therefore, AB 1725 calls for an immense amount of work at the district level to put the employment reforms in place. Furthermore, since most of the reforms impose new State-mandated costs, additional State funding must be provided before districts can be required to even start this work. Finally, many or most of the local policies are to be developed in collaboration with with faculty. Considering that this will be the first time that most of these policies are negotiated, and considering that both local boards and their faculties will find themselves in new roles, it is reasonable to allow for considerable time to develop these policies.

When AB 1725 was being constructed, it was determined that districts ought to have about 18 months (January 1989-June 1990) to complete all of the preparatory work, and that at least one year of this work (Fiscal Year 1989-90) had to be funded. Accordingly, the "trigger" mechanism in the bill was drafted so that most employment reforms (except the new tenure provisions), had to be implemented by July 1, 1990, provided that adequate funding was made available to districts. The language provides:

Sections 27 to 34, inclusive, and Sections 51 to 56, inclusive, of this act shall be implemented by the board of governors and be mandatory with regard to implementation by community college districts only if the board of governors certifies . . . that adequate funding has been provided for Phase I of transitional program improvement and for applicable state mandates . . . *If the board of governors so certifies, each of these sections shall be implemented on the date of certification, or upon the operative date specified for the particular section in this act, whichever is later.* [Section 70(d), emphasis added]

Unfortunately, drafting errors in AB 1725 make it possible for several employment reforms – e.g., sunseting of credentials, requirements to evaluate part-time instructors and provide for peer review evaluation, establishing faculty service areas, among others – to become mandatory with regard to full implementation considerably earlier than the intended July 1, 1990, date. When these reforms were enacted in various parts of the *Education Code*, some inadvertently were not accompanied with language that kept them from becoming operative until at least July 1, 1990. Consequently, under Section 70 of the bill, they become mandatory with regard to implementation on the effective date of the Board's certification that adequate funding has been provided for Phase I of reform. Because the funding has been legislatively appropriated for 1989-90 (although none of the funds have yet been allocated to districts), the Board of Governors could determine that the legislative appropriation "provided" the money, and thus make the certification at any time. Such action would trigger the reforms earlier than intended. Initially, it was thought that legislation might be necessary to correct the drafting ambiguities; however, staff has determined that the matter may be addressed through administrative action of the Board of Governors.

Section 70 specifies that the reforms become mandatory for districts when the Board certifies "that adequate funding has been provided for Phase I. . . ." Although the Legislature has appropriated "adequate funding" (\$70 million) to the Board of Governors, the Board has not yet allocated these funds to districts. In fact, the \$70 million will be allocated during the course of the 1989-90 fiscal year, with final allocations not being made until late June of 1990. Under these conditions, the full amount of program improvement money will not have been provided until June 30, 1990. Accordingly, the Board of Governors, in making its certification, can determine that "adequate funding" was provided on June 30, 1990.

By establishing the effective date of certification as June 30, 1990, districts will be enabled, during 1989-90, to complete the necessary preparatory work before the reforms become mandatory on July 1, 1990. Ongoing administration of the new mandates will then commence on July 1, 1990.

There is no danger that districts will not take steps to fully implement these Phase I employment reforms by the end of 1989-90. As a condition for receipt of program improvement funds for 1989-90, all districts are being required to certify that they will implement these reforms by July 1, 1990. Thus, while the statutes themselves are not mandatory with regard to implementation until June 30, 1990, districts will be legally bound to implement these reforms by virtue of certifications made with respect to their receipt of program improvement funds.

Board of Governors
California Community Colleges
November 8-9, 1990

**BOARD CERTIFICATION REGARDING
ADEQUATE FUNDING FOR PHASE II OF
AB 1725**

14

First Reading, Action Scheduled

Background

In providing the blueprint for major changes in the California Community Colleges, Assembly Bill 1725 (Chapter 973, Statutes of 1988) was developed at a time when the State had insufficient resources to provide full funding for reform. The bill was also developed with the understanding that its various provisions would have to be implemented over time. The Legislature recognized that sweeping changes could not be completed overnight, and that both the Board of Governors and districts would need time to develop the policies, procedures, and structures for carrying out the specifics of reform.

Section 70 of AB 1725 (Appendix), dubbed the "trigger provision," provides for reforms to be implemented in two stages: "Phase I" and "Phase II." Certain specified reforms become mandatory with each phase, which is triggered when the Board of Governors certifies in writing to the Governor and the Legislature that adequate funding has been provided for that phase. The Legislature provided its estimate that \$70 million would be needed for each phase.

In July of 1989, the Legislature appropriated \$70 million to the Board of Governors for Phase I of reform. In September of that year, the Board adopted a certification that, effective June 30, 1990, adequate funding would be provided for Phase I.

Analysis

As a result of the 1990-91 State Budget, and the recent passage of Senate Bill 1446 (Chapter 1321, Statutes of 1990), the second \$70 million has been appropriated to the Board of Governors for Phase II of reform. These funds will be allocated to districts during the course of 1990-91, with final funds reaching them by June 30, 1991.

With the Board's certification that adequate funding has been provided for Phase II, the final two AB 1725 reforms will be triggered: program-based funding and tenure



The Challenge of Change: A Reassessment of the California Community Colleges

Four - Faculty and Administrators

To respond successfully to the challenges ahead, the Community Colleges must be concerned not only with access and success and with the strength of their instructional programs, but also with the quality of the faculties and staff who teach and administer those programs. In the past, the colleges have often successfully attracted and retained excellent teachers and administrators, even during periods of rapid growth. Past achievements, however, do not guarantee future success. Accordingly, the Commission has reviewed a number of factors directly related to the quality of Community College faculty and administrators: credentialing, recruitment and affirmative action, employment of part-time faculty, tenure, compensation, collective bargaining, and staff development.

Credentials

The Community Colleges must recruit and retain faculty and administrators with the highest professional qualifications. To this end, the Board of Governors must establish qualifications appropriate to postsecondary institutions and make certain that both full-time and part-time faculty appointments are subject to peer review, as they are in other collegiate institutions.

California is the only state to retain a system of credentialing for community college faculty and administrators originally developed for the elementary and secondary schools. Under this system, new faculty are to obtain a credential in one or more of sixty-six subject matter areas based on a *pro forma* paper review. There is no requirement that proposed new faculty appointments be reviewed by tenured faculty in the appropriate department or division of each college. This system is unnecessarily rigid, cumbersome, and unsuited to the academic rigor of postsecondary institutions.

The Commission recommends:

34. That the Legislature delete from the *Education Code* existing credential requirements for Community College faculty and administrators.

35. That the Legislature authorize the Board of Governors, in consultation with the faculty, to (a) establish qualifications for employment of faculty and administrators, and (b) require that new faculty appointments, both full-time and part-time, be subject to peer review in addition to other administrative procedures.

Recruitment and Affirmative Action

The Community Colleges should recruit faculty and administrators who approximate the mix of ethnic background and gender of the communities they serve and who meet the highest professional standards. The colleges are responsible not only to provide appropriate role models and equal educational opportunity but also to advance the State's public policy goal of equal employment opportunity. The growing diversity of the population demands the same growth in the diversity of college faculty and staff. The Board of Governors has adopted regulations requiring the Community Colleges to develop and implement affirmative-action employment plans. It has also established a system of affirmative-action employment targets for the colleges and continues to monitor progress toward those targets. The most recent data on Community College faculty and staff indicate, however, that the faculty and administrative staff of the colleges remain predominantly white and male, although some progress has been made in the employment of underrepresented minorities and women. To a

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large degree, this is an intersegmental and societal problem that must be addressed in the Commission's Master Plan Review, but a much stronger effort by the Community Colleges is needed now.

The Commission recommends:

36. That the Board of Governors prepare a plan for strengthening Community College faculty and staff affirmative action policies and programs and monitor and publish the results by college. The plan should include clear lines of district accountability for its success and ensure participation in and commitment to effective affirmative action by district trustees, administrators, and faculty alike.

Employment of Part-Time Faculty

Each college must employ a strong core of full-time faculty responsible for maintaining the highest professional standards among their colleagues and within the college itself. The personnel policies for the Community Colleges must encourage institutional flexibility and be free of costly and rigid requirements. The employment of part-time faculty may be desirable to meet unanticipated growth, teach evening classes, staff specialized programs, and provide special skills or experience not otherwise available.

At the same time, the colleges should require part-time faculty to be available to students and to participate in curricular development in much the same manner as full-time faculty. This is particularly important if students are to have access to skilled assessment, counseling, and placement services as recommended earlier.

Community College districts vary widely in their employment of part-time faculty as a consequence of their differing program emphasis, enrollment gains and losses, and other factors. Statewide, the percentage of faculty who are employed full-time has risen from thirty-one percent in 1977-78 to forty-two percent in 1983-84. Nevertheless, concern for possible excessive use of part-time instructors resulted in legislation that prohibits districts from employing part-time instructors in greater numbers (as measured by weekly faculty contact hours) than they did on average over the three-year period 1980-81 through 1982-83 without approval by the Board of Governors. The Commission believes that this statutory provision is overly restrictive, and that the matter of part-time faculty, like virtually all other faculty matters, is better left to the Board of Governors and the colleges.

There are four principal kinds of part-time instructors: those who teach one or two classes in fields in which they are employed, those who teach part-time in two or more districts and are therefore actually full-time instructors, those who teach in a public school or another postsecondary institution, and those full-time instructors who teach one or two classes beyond their full-time loads. Instructors in the first three categories are generally unavailable to students outside the classroom and do not participate in curricular development or other faculty activities. Thus, they cannot contribute to the collegial nature of campus administration or to the counseling and other forms of support needed by many students, and their contributions to the quality of instruction is less than it should be.

The Commission recommends:

37. That the Legislature repeal the statutory restriction on the employment of part-time faculty and authorize the Board of Governors to establish a statewide policy for the Community Colleges consistent with the objective of maintaining a core of experienced full-time faculty in each major department.

38. That the Board of Governors urge the Community Colleges to require part-time instructors to participate in student advisement and curricular development in addition to classroom instruction.

39. That the Legislature authorize Community College districts to employ those part-time faculty who teach six units or more on a contractual basis, as recommended in the following section.

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Tenure

In virtually every other postsecondary setting, new full-time faculty must serve a reasonable period of probation, during which they can be thoroughly evaluated by their peers as well as by students and administrators. Tenure is granted only after six or seven years of probation and by vote of the tenured members of each candidate's department or division. A formal system of peer review, prior to the granting of tenure, and a system of periodic evaluation of tenured and part-time faculty by their peers, students, and administrators will significantly strengthen the faculties of the Community Colleges. Current evaluation procedures, which are determined by each district board in consultation with its faculty, do not appear to be adequate for this purpose. Full-time Community College faculty currently receive tenure after less than two years of employment and without formal peer review. This tenure system is similar to that of the elementary and secondary schools and does little to help the colleges demand excellence in teaching as a primary goal.

The colleges have no contractual system for employing faculty for more than a year without granting them tenure. This unnecessarily limits the ability of districts to retain highly skilled and experienced part-time instructors. The employment policies for Community College faculty must encourage excellence in teaching, curricular flexibility, and efficient management.

The Commission recommends:

40. That the Legislature authorize the Board of Governors to establish the number of years new full-time

faculty shall serve prior to receiving tenure. The Commission supports a probationary period of at least four years.

41. That the Legislature authorize the Board of Governors to establish a formal system of peer review prior to the granting of tenure, and periodic evaluation of part-time, probationary, and tenured faculty by their peers, students, and administrators. Evaluation reports should be reviewed whenever faculty are considered for advancement in rank and salary.

42. That the Legislature authorize the Board of Governors to develop, and one or more districts to adopt, a pilot program of two- to five-year "rolling" contracts, coupled with periodic peer and student review, as an alternative to tenure.

Compensation

Unlike other postsecondary institutions that base compensation on academic rank and achievement, salaries of Community College faculty and administrators are now set by district boards according to schedules based on the extent of the employee's formal education and years of service. The Community Colleges should develop salary schedules based upon academic rank, enabling them to promote faculty according to their contributions to the institution rather than solely on the basis of longevity or course credits. The colleges should also be encouraged to compensate part-time faculty for participating in student advisement, curricular planning, and other activities closely related to the quality of education on each campus. These two changes will encourage the excellence that must characterize a viable postsecondary institution.

The Commission recommends:

43. That the Board of Governors urge the districts to adopt salary schedules for Community College faculty that are based primarily on academic rank.

44. That the Board of Governors urge the districts to compensate part-time faculty appropriately for duties required in addition to classroom teaching.

Collective Bargaining

There must be a clear distinction between matters of policy and administration that are to be determined through collective bargaining with faculty representatives, and those matters more properly decided through consultation among administrators, governing boards, and faculty senates. Among the latter are the criteria

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to be used in the appointment, evaluation, and promotion of academic employees.

The Education Employment Relations Act (EERA), which was designed primarily for public school employees, provides little protection for Community College academic senates. Conflicts between the faculty bargaining units and the faculty senates are likely to be resolved in favor of the bargaining units, which may have the same membership as the faculty senates, or to be passed on to the courts. When EERA was enacted, faculty senates were not strong on Community College campuses, hence no special provisions were made for them in the Act. The Higher Education Employer-Employee Relations Act (HEERA), which governs collective bargaining for California State University and University of California employees, delineates and protects the role of the academic senates of California State University and University of California with respect to policies affecting academic and professional matters. Comparable protection is logical for Community College academic senates.

The Commission recommends:

45. That the Board of Governors prepare and submit to the Legislature proposed legislation to amend the Education Employment Relations Act to delineate and protect the role of the academic senates with respect to policies affecting academic and professional matters.

Professional Development

Community College instructors, recruited directly from graduate school or from some form of employment other than teaching, may not be prepared to deal effectively with the wide range of student abilities and attitudes found in Community College classrooms. As larger numbers of students from many different cultural backgrounds and with significant language and other deficiencies are enrolled, the problem will become more serious for both administrators and faculty. The establishment of the proposed student assessment, counseling, and placement program on each campus will also require additional training and assistance for both faculty and administrators.

New and experienced faculty, both full-time and part-time, must be encouraged to strengthen their teaching skills through appropriate inservice, on-campus training programs and other activities. Such programs should also provide opportunities for professional growth and the development of interpersonal skills, including those skills important to working with colleagues, participating in peer review, providing student counseling, and other professional activities.

Professional staff development programs are often unsuccessful if they do not provide opportunities for professional growth and are not linked closely to evaluation activities and promotion policies that help to identify the faculty and administrators who can benefit most from inservice training. Professional development programs must be available to college administrators as well as faculty members, and must be closely linked with evaluation and promotion policies.

The Commission recommends:

46. That the Board of Governors develop and implement a plan to strengthen professional development programs on Community College campuses. The programs should serve faculty and administrators alike and be closely linked to regular evaluation and promotion procedures. This plan should be supported by an appropriation to the Board of Governors for allocation among the participating colleges.

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Title: [1986] The Challenge of Change: A Reassessment of the California Community Colleges

By: Commission for the Review of the Master Plan for Higher Education, Author, Shansby, J. Gary, Author

Date: March, 1986

Contributing Institution: California Assembly Publications, 1020 N Street, Sacramento, CA 95814

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**SUBCHAPTER 13. CERTIFICATES OF QUALIFICATION FOR
TEACHERS OF CLASSES FOR ADULTS**

52600. Eligibility. An applicant shall be eligible for a certificate of qualifications if the requirements of both of the following subdivisions are satisfied:

(a) The applicant satisfies one of the following requirements:

(1) The applicant has successfully completed four years of higher education with a major in a subject matter area.

(2) The applicant has completed four years of occupational experience in a subject matter area.

(b) The district, which maintains the Community College which will employ the applicant, certifies that the applicant has adequate training and experience to teach the classes for which the applicant is to be employed.

52601. Certificate Document. A certificate of qualifications shall state the name of the classes for which the holder was certified and the district by which he was certified.

52602. Services Authorized. A certificate of qualifications authorizes its holder to teach the classes for adults named on the credential in a Community College maintained by the district named on the credential document.

SUBCHAPTER 2. PROCEDURE

Article 1. New Credentials or Certificates

52030. Applications.

Applications for the issuance of a new credential shall be submitted to, and in the manner required by, the Chancellor.

NOTE: Authority cited: Sections 71020, 71068 and 87274, Education Code. Reference: Sections 87214, 87215, 87219, 87220 and 87221, Education Code.

52031. Subject Matter Areas.

Each applicant for a Community College Instructor Credential or Community College Limited Service Credential shall indicate on the application the subject matter areas in which the applicant wishes the credential to authorize him or her to instruct and shall verify the occupational experience or the completion of the courses which qualify the applicant in such subject matter areas, with whatever explanation is necessary to show the relationship of each course to the particular subject matter areas claimed. The applicant shall provide verification of employment by the employer.

NOTE: Authority cited: Sections 71068 and 87275, Education Code. Reference: Sections 87227, 87275, 87294 and 87295, Education Code.

52032. Occupational Experience.

To satisfy the requirements in this chapter for occupational experience, the occupational experience claimed shall have occurred within the 10 calendar years immediately preceding the date on which the application was first submitted. One year of the occupational experience claimed shall have occurred within the three calendar years immediately preceding the date on which the application is first submitted. Notwithstanding the provisions of Section 52033 this latter requirement may be satisfied by one year of full time teaching in the subject matter area of the occupational experience claimed within the three calendar years immediately preceding the date on which the application is first submitted.

"Year", for the purposes of measuring occupational experience, means that period of time which in that occupation is accepted by contract of general agreement as a regular work year for that occupation on a full time basis. Occupational experience claimed by an applicant in support of the application which is less than full time experience shall be counted towards a "year" in the same proportion as it bears to full time work on that occupation.

NOTE: Authority cited: Sections 71068 and 87274, Education Code. Reference: Sections 87275 and 87295, Education Code.

52033. Occupational Experience—Exception.

Except as expressly provided elsewhere in these regulations, no person shall qualify for a Community College Instructor Credential or Community College Supervisor Credential on the basis of occupational experience in a subject matter area in which a master's degree, or its academic equivalent, is the standard of preparation usually required for teaching in that subject matter area in the California Community Colleges.

NOTE: Authority cited: Section 71068 and 87274, Education Code. Reference: Sections 87275 and 87295, Education Code.

52034. Occupational Experience—Teaching.

Notwithstanding the provisions of Sections 52015 and 52033, a person who holds a baccalaureate degree may qualify to teach in the following subject matter areas on the basis of appropriate teaching experience without regard to the subject matter area of such person's majors or minors:

**SUBCHAPTER 14. CERTIFICATES OF QUALIFICATION
FOR TEACHERS OF CLASSES FOR ADULTS**

52275. Eligibility.

An applicant shall be eligible for a Certificate of Qualifications if the requirements of both of the following subdivisions are satisfied:

(a) The applicant satisfies one of the following requirements.

(1) The applicant has successfully completed four years of higher education with a major in a subject matter area.

(2) The applicant has completed four years of occupational experience in a subject matter area.

(b) The district, which maintains the community college which will employ the applicant, certifies that the applicant has adequate training and experience to teach the classes for which the applicant is to be employed.

NOTE: Authority cited: Sections 71068, 87274 and 87295, Education Code. Reference: Sections 78401, 78402, 78403 and 87295, Education Code.

52276. Certificate Document.

A Certificate of Qualifications shall state the name of the classes for which the holder was certified and the district by which he was certified.

NOTE: Authority cited: Sections 71068, 87274 and 87295, Education Code. Reference: Sections 87227 and 87295, Education Code.

52277. Services Authorized.

A Certificate of Qualifications authorizes its holder to teach the noncredit classes named on the credential in a community college maintained by the district named on the credential document.

NOTE: Authority cited: Sections 71068, 87274 and 87295, Education Code. Reference: Sections 87227 and 87295, Education Code.

including the approval or disapproval of plans therefor, and shall provide advisory service in connection with such formations or reorganizations. The board of governors shall encourage county committees on school district organization to include all territory of the state within public community college districts.

SEC. 9. Section 200.4 of the Education Code is amended to read:

200.4. The board of governors shall coordinate and encourage interdistrict, regional, and statewide development of public community college programs and facilities.

SEC. 10. Section 200.5 of the Education Code is amended to read:

200.5. The board of governors shall approve the offering of out-of-district classes by public community college districts.

SEC. 11. Section 200.6 of the Education Code is amended to read:

200.6. The board of governors shall review and approve academic master plans and master plans for facilities for each community college district. These shall be submitted to the board of governors by the local governing board of each community college district.

SEC. 12. Section 200.8 of the Education Code is amended to read:

200.8. The board of governors shall review and approve all educational programs offered in the community colleges. For the purposes of this section, "educational program" is a series of courses leading to a degree, a certificate, a diploma, or transfer to another institution of higher education. Individual courses offered under educational programs approved by the board of governors shall be approved by the district governing board and shall not be submitted to the board of governors for approval.

SEC. 13. Section 200.9 of the Education Code is amended to read:

200.9. The board of governors shall establish criteria and standards for graded and nongraded classes in community colleges.

SEC. 14. Section 200.11 of the Education Code is amended to read:

200.11. The board of governors shall establish minimum standards for the employment of academic and administrative staff in community colleges.

SEC. 15. Section 200.12 of the Education Code is amended to read:

200.12. The board of governors shall conduct necessary statewide research on community colleges and shall 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.

for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, an information filed, or case certified to the superior court within six years after its commission. An indictment for grand theft, forgery, voluntary manslaughter, or involuntary manslaughter shall be found, an information filed, or case certified to the superior court within three years after its discovery.

CHAPTER 955

An act to amend Section 5355 of the Welfare and Institutions Code, relating to conservatorship for disabled persons.

[Approved by Governor October 8, 1971, Filed with
Secretary of State October 8, 1971.]

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

SECTION 1. Section 5355 of the Welfare and Institutions Code is amended to read:

5355. If the conservatorship investigation results in a recommendation for conservatorship, the recommendation shall designate the most suitable person or state or local agency or county officer or employee designated by the county to serve as conservator. No person, nor agency, shall be designated as conservator whose interests, activities, obligations or responsibilities are such as to compromise his or their ability to represent and safeguard the interests of the conservatee. Nothing in this section shall be construed to prevent the Department of Mental Hygiene from serving as guardian pursuant to Section 7284, or the function of the conservatorship investigator and conservator being exercised by the same public officer or employee.

When a public guardian is appointed conservator, his official bond and oath as public guardian are in lieu of the conservator's bond and oath on the grant of letters of conservatorship. No bond shall be required of any other public officer or employee appointed to serve as conservator.

CHAPTER 956

An act to amend Sections 939 and 20607 of, to add Sections 17311 and 21107.5 to, and to add Article 1.5 (commencing with Section 17325) to Chapter 2 of Division 14 of, the Education Code, relating to public schools.

[Approved by Governor October 8, 1971, Filed with
Secretary of State October 8, 1971]

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

SECTION 1. Section 939 of the Education Code is amended to read:

939. The superintendent of each school district shall, in addition to any other powers and duties granted to or imposed upon him:

(a) Be the chief executive officer of the governing board of the district.

(b) Excepting in districts where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare and submit a budget, prepare and submit to the governing board of the district, at such time as it may direct, the budget of the district for the next ensuing school year, and revise and take such other action in connection with the budget as the board may desire.

(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. Such power to assign includes the power to transfer a teacher from one school to another school at which the teacher is certificated to serve within the district when the superintendent concludes that such a transfer is in the best interest of the district.

(d) Upon adoption, by the district board, of a district policy concerning transfers of teachers from one school to another school within the district, have authority to transfer teachers consistent with such policy.

(e) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him to serve in the position to which he is assigned.

(f) Enter into contracts for and on behalf of the district pursuant to Section 15961.

(g) Submit reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board at least once every three months during the school year.

SEC. 2. Section 17311 is added to the Education Code, to read:

17311. A governing board of a school district which determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations may request an emergency apportionment through the Superintendent of Public Instruction subject to the requirements and repayment provisions of Article 1.5 (commencing with Section 17325) of this chapter.

It is not the intent of the Legislature that this section authorize emergency loans to school districts for the purpose of meeting cash flow requirements pending the receipt of local taxes and other funds.

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

SECTION 1. Article 3.5 (commencing with Section 13345) is added to Chapter 2, Division 10, of the Education Code, to read:

Article 3.5. Employment of Community College
Certificated Personnel

13345. The provisions of this article govern the employment of persons by a district to 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.

13345.05. 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.

13345.10. For the purposes of other provisions of law:

(a) A contract employee is a probationary employee.

(b) A regular employee is a permanent employee.

13345.15. 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.

13346. The governing board of a district shall employ each certificated person as one of the following: contract employee, regular employee, or temporary employee.

13346.05. 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 13346.20 shall be deemed to be employed for "the first academic year of his employment or a portion thereof."

13346.10. 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.

13346.15. 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.

13346.20. 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.

13346.25. 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.

13346.30. 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.

13346.32. 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.

13346.40. A temporary employee is a certificated employee who is employed from day to day or week to week by the governing board of the district. A substitute employee is a temporary employee. If a temporary employee has been employed during an academic year for 75 percent or more of the days on which classes were maintained by the district during that academic year, the governing board of the district shall deem the employee a contract employee serving under his first contract for that academic year and may employ him as a contract employee serving under his second contract for the following academic year.

13348.05. Until terminated in accordance with provisions of law, a part-time regular employee shall be assigned, and compensated, for a period of service less than 75 percent of the number of days the colleges of the district are maintained during each academic year. The governing board of the employing district may establish an assignment for any period of days less than 75 percent.

At its discretion, the governing board of the employing district may assign and compensate a part-time regular employee for a period of service of 75 percent or more of the number of days the colleges of the district are maintained during each academic year. Such an assignment shall not change the employee's classification to that of full-time regular employee unless an assignment of this type is made for two consecutive academic years.

SEC. 2. Section 13411.5 is added to the Education Code, to read:

13411.5. The governing board of a community college district shall dismiss certificated employees under the provisions of Section 13411, subdivision (i) in accordance with the provisions of Article 5.3 (commencing with Section 13480) of this chapter.

SEC. 3. Section 13443.5 of the Education Code is amended to read:

13443.5. Whenever the governing board of any school district dismisses an employee pursuant to Section 13442 or gives notice to an employee that his services will not be required for the ensuing year pursuant to Section 13443, the governing board shall on or before September 1 of the next succeeding school year transmit to the State Department of Education a statement of the reasons for such dismissal or failure to rehire. The statement of reasons should be a true and exact copy of the statement of cause for dismissal or reasons for dismissal given the employee under Section 13442 or 13443 if such a statement is given, and the governing board shall so certify.

The statement so transmitted to the State Department of Education shall be treated as confidential matter by the department. Such statements shall be referred to only to the extent necessary for accomplishment of the objectives of this section and shall be for all purposes the confidential property of the department.

The department shall prepare and maintain, from the statements so transmitted, a descriptive and statistical analysis, by category of causes or reasons of dismissal or failure to rehire, and shall report thereon to the Legislature each general session of the Legislature.

The provisions of this section do not apply to actions by the governing board of a community college district.

SEC. 4. Article 5.3 (commencing with Section 13480) is added to Chapter 2, Division 10, of the Education Code, to read:

**Article 5.3. Evaluation of Community College
Certificated Personnel**

13480. The provisions of this article govern the evaluation of, the dismissal of, and the imposition of penalties on, certificated personnel employed by a community college district. Other provisions of this code which govern the evaluation of, dismissal of, and the imposition of penalties on, certificated personnel employed by a school district shall be applied to persons employed by a community college district in a manner consistent with the provisions of this article.

13480.05. 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.

13480.15. The provisions of this article do not apply to persons employed 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.

13481. 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.

13481.05. The governing board of each district in consultation with the faculty shall adopt rules and regulations establishing the specific procedures for the evaluation of its contract and regular employees on an individual basis and setting forth reasonable but specific standards which it expects its certificated employees to meet in the performance of their duties. Such procedures and standards shall be uniform for all contract employees and shall be uniform for all regular employees of the district.

13482. The governing board may terminate the employment of a temporary employee at its discretion at the end of a day or week, whichever is appropriate. The decision to terminate the employment is not subject to judicial review except as to the time of termination.

13482.05. During the school year, all contract and regular employees are subject to dismissal and the imposition of penalties on the grounds and pursuant to procedures set forth in this article.

13482.10. A contract or regular employee may be dismissed or penalized for one or more of the grounds set forth in Section 13403.

13482.15. A governing board may impose one of the following penalties:

(a) Suspension for up to one year.

(b) Suspension for up to one year and a reduction or loss of compensation during the period of suspension.

13482.20. The governing board shall determine whether a contract or regular employee is to be dismissed or penalized. If the employee is to be penalized, the governing board shall determine the nature of those penalties. If the employee is to be dismissed or penalized, the governing board shall determine whether the decision shall be imposed immediately or postponed in accordance with Section 13482.35.

13482.25. The procedure set forth in this article does not apply to an immediate suspension required by Section 13409.

13482.30. A contract or regular employee may be dismissed or penalized if one or more of the grounds set forth in Section 13403 are present and the following are satisfied:

(a) The employee has been evaluated in accordance with standards and procedures established in accordance with the provisions of this article.

(b) The district governing board has received all statements of evaluation which considered the events for which dismissal or penalties may be imposed.

(c) The district governing board has received recommendations of the superintendent of the district and, if the employee is working for a community college, the recommendations of the president of that community college.

(d) The district governing board has considered the statements of evaluation and the recommendations in a lawful meeting of the board.

13482.35. If a governing board decides it intends to dismiss or penalize a contract or regular employee, it shall deliver a written statement, duly signed and verified, to the employee setting forth the complete and precise decision of the governing board and the reasons therefor.

The written statement shall be delivered by serving it personally on the employee or by mailing it by United States registered mail to the employee at his address last known to the district.

A governing board may postpone the operative date of a decision to dismiss or impose penalties for a period not to exceed one year, subject to the employee's satisfying his legal responsibilities as determined by statute and rules and regulations of the district. At the end of this period of probation, the decision shall be made operative or permanently set aside by the governing board.

13482.45. If the employee objects to the decision of the governing board or the reasons therefor on any ground, he shall notify in writing the governing board, the superintendent of the district which employs him, and the president of the college at which he serves of his objection within 30 days of the date of the service of the notice.

13483. Within 30 days of the receipt by the district governing board of the employee's demand for a hearing, the employee and the governing board shall agree upon an arbitrator to hear the matter. When there is agreement as to the arbitrator, the employee and the governing board shall enter into the records of the governing board written confirmation of the agreement signed by the employee and an authorized representative of the governing board. Upon entry of such confirmation, the arbitrator shall assume complete and sole jurisdiction over the matter.

13483.05. The arbitrator shall conduct proceedings in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code. He shall determine whether there is cause to dismiss or penalize the employee. If he finds cause, he shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and he shall determine whether his decision should be imposed immediately or postponed pursuant to Section 13482.35.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made

based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

13483.10. In the case in which the arbitrator determines that the operation of his decision should be postponed, any question of terminating the postponement shall be determined by the arbitrator.

13483.20. The district alone shall pay the fees of the arbitrator, his expenses, and such expenses as he shall determine are a cost of the proceedings. The "cost of the proceedings" does not include any expenses paid by the employee for his counsel, witnesses, or the preparation or presentation of evidence on his behalf.

13483.25. If within 30 days of the receipt of the notification by the district governing board, no written confirmation of agreement of the employee and the governing board as to an arbitrator has been submitted to the secretary of the governing board for entry into its records, the governing board shall certify the matter to the Office of Administrative Procedure and request the appointment of an administrative hearing officer.

13483.30. The administrative hearing officer shall conduct proceedings in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code. The written notice delivered to the employee pursuant to Section 13482.35 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 13482.45 shall be deemed the notice of defense.

13483.35. The hearing officer shall determine whether there is cause to dismiss or penalize the employee. If he finds cause, he shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and he shall determine whether his decision should be imposed immediately or postponed pursuant to Section 13482.35.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

13483.40. In the case in which the hearing officer determines that the operation of his decision should be postponed, any question of terminating the postponement shall be brought to the hearing officer.

13483.45. The decision of the arbitrator or hearing officer, as the case may be, may, on petition of either the governing board or the employee, be reviewed by a court of competent

jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

13483.50. The charges levied by the Office of Administrative Procedure shall be paid by the district.

13484. If a contract or regular employee is dismissed or penalized for immoral conduct or conviction of a felony or crime involving moral turpitude, the governing board shall transmit to the Chancellor, California Community Colleges, and to the county superintendent of schools which issued the certificate under which the employee was serving at the time of his dismissal or the imposition of his penalty, a statement setting forth the acts of the employee and a request that any certificate issued by the county board of education to the employee be revoked if the employee is not reinstated upon appeal.

SEC. 5. Chapter 2.5 (commencing with Section 25490) is added to Division 18.5 of the Education Code, to read:

CHAPTER 2.5. CERTIFICATED EMPLOYEES

Article 1. General Provisions

25490. The provisions of this chapter apply to all persons employed by a community college district in positions requiring certification qualifications.

25490.05. A superintendent, assistant superintendent, or deputy superintendent of a community college district shall be employed, and the president of a community college may be employed, by the governing board of the district by a contract not to exceed four years. The contract may be extended for periods of no more than four years at the discretion of the governing board. The dismissal and imposition of penalties on a superintendent or president employed by contract pursuant to this section shall be in accordance with the terms of the contract of employment.

25490.10. 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 the provisions of Articles 3.5 and 5.3 and with the provisions of this

CHAPTER 1109

An act to add Section 1397 to the Civil Code, relating to support payments.

[Approved by Governor July 12, 1965 Filed with
Secretary of State July 12, 1965.]

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

SECTION 1. Section 139.7 is added to the Civil Code, to read:

139.7. An order for payment of an allowance for the support of one of the parties pursuant to Section 139 shall terminate at the end of the period specified in the order and shall not be extended unless the court in its original order retains jurisdiction.

CHAPTER 1110

An act to add Section 13443 to, and to repeal Sections 13443 and 13444 of, the Education Code, relating to probationary employees.

[Approved by Governor July 12, 1965 Filed with
Secretary of State July 12, 1965]

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

SECTION 1. Section 13443 of the Education Code is repealed.

SEC. 2. Section 13443 is added to said code, to read:

13443. (a) On or before the 15th day of May in any year, the governing board may give notice in writing to a probationary employee that his services will not be required for the ensuing year, provided that in no case shall such notice be given until after the requirements of this section have been met.

(b) No later than March 15 and before an employee is given notice that his 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 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 such notice be given to the employee, and stating the reasons therefor.

(c) The employee may request a hearing before the governing board to determine if there is cause for not reemploying him for the ensuing year. A request for a hearing must be in writing and must be delivered to the person who sent the notice pursuant to subdivision (b), on or before a date specified therein, 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, his failure to do so shall constitute his waiver of his right to a hearing. The notice provided for in subdivision (b) shall advise the employee of the provisions of this subdivision.

(d) 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 the said Chapter 5, except that the respondent shall file his notice of defense, if any, within five days after service upon him of the accusation and he shall be notified of such five-day period for filing in the accusation. The hearing shall be commenced on or before April 15, and in the event the hearing is conducted by a hearing officer alone, he shall prepare the proposed decision and submit it to the governing board on or before May 1 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the hearing officer, shall be paid by the governing board from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

(e) The governing board's determination not to reemploy a probationary employee for the ensuing school 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 schools and the pupils thereof. The decision made after the hearing shall be effective on May 15 of the year in which the proceeding is commenced.

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

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the person or persons 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 addressee or addressees.

(h) In the event that the governing board does not give notice provided for in subdivision (a) of this section 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 (c) any continuance is granted pursuant to Government Code Section 11524, the dates prescribed in subdivisions (a), (d), (e) and (h) which occur on or after the date of granting the continuance shall be extended for a period of time equal to such continuance.

SEC. 3. Section 13444 of said code is repealed.

CHAPTER 1015

An act to amend Section 986.01 of the Military and Veterans Code, relating to farm and home purchases.

[Approved by Governor October 1, 1973 Filed with
Secretary of State October 1, 1973]

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

SECTION 1. Section 986.01 of the Military and Veterans Code is amended to read:

986.01. On and after January 1, 1974, all applications for the benefits contained in this article shall be filed with the department within 25 years from the date of the applicant's discharge from the service, except applications filed by either:

- (a) Veterans who were wounded or are disabled as a result of wartime service; or
- (b) Veterans who were previously declared prisoners of war.

CHAPTER 1016

An act to amend Section 13443 of, and to add Section 20904.2 to, the Education Code, relating to public school employees.

[Approved by Governor October 1, 1973 Filed with
Secretary of State October 1, 1973]

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

SECTION 1. Section 13443 of the Education Code is amended to read:

13443. (a) No later than March 15 and before an employee is given notice by the governing board that his 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 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 such notice be given to the employee, and stating the reasons therefor.

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

Until the employee has requested a hearing as provided in subdivision (b) or has waived his 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 for the ensuing year. A request for a hearing must be in writing and must be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified therein, 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, his failure to do so shall constitute his waiver of his 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 therein, except that: (1) the respondent shall file his notice of defense, if any, within five days after service upon him of the accusation and he shall be notified of such five-day period for filing in 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; and (3) the hearing shall be conducted by a hearing officer 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 schools and the pupils 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 hearing officer 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 hearing officer, shall be paid by the governing board from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a probationary employee for the ensuing school 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 schools and the pupils thereof and provided that cause shall include termination of services for the

reasons specified in Section 13447. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

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

(f) If a governing board notifies a probationary employee that his services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee's written request, provide him with a statement of its reasons for not reemploying him for the ensuing school 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) In the event that the governing board does not give notice provided for in subdivision (e) of this section 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 Government Code Section 11524, the dates prescribed in subdivisions (c), (d), (e) and (h) which occur on or after the date of granting the continuance shall be extended for a period of time equal to such continuance.

SEC. 2. Section 20904.2 is added to the Education Code, to read: 20904.2. The amount determined pursuant to subdivision (g) of Section 20904 shall be adjusted to allow for any increased costs to a school district which may be incurred by it in carrying out the requirements imposed by the amendments made to Section 13443 by the act enacting this section.

SEC. 3. There are no state-mandated local costs that require reimbursements under Section 2164.3 of the Revenue and Taxation Code.

CHAPTER 1017

An act to amend Section 19522 of the Revenue and Taxation Code, relating to senior citizens tax assistance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1973 Filed with
Secretary of State October 1, 1973]

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

SECTION 1. Section 19522 of the Revenue and Taxation Code is amended to read:

19522. (a) If the amount of assistance exceeds five dollars (\$5),

(c) The policy must cover at the date of issue at least 50 persons. If the fund is established by the members of an association of employers the policy may be issued only if (i) either (a) the participating employers constitute at date of issue at least 60 percent of those employer members whose employees are not already covered for group life insurance or (b) the total number of persons covered at date of issue exceeds 600; and (ii) the policy shall not require that, if a participating employer discontinues membership in the association, the insurance of his employees shall cease solely by reason of such discontinuance.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection by the insured persons or by the trustees, employers or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to the employers, or any of them, or to the trustee of a fund established in whole or in part by the employers, or any of them, exceeds fifty thousand dollars (\$50,000).

Such insurance may be issued with or without medical examination. For the purpose of this section the word "industry" shall not include licensed professions, such as medicine, dentistry, pharmacy, law and accountancy.

SEC. 2. Nothing in this act, as it amends the introductory paragraph of Section 10202.8, shall be construed so as to broaden the scope of the type of employer who may participate in a trust.

CHAPTER 458

An act to amend Sections 1551 and 13566 of the Education Code as enacted by the Legislature at its 1959 Regular Session, relating to powers and duties of superintendents of school districts.

[Approved by Governor May 16, 1959 Filed with
Secretary of State May 18, 1959]

In effect
September
18, 1959

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

SECTION 1. Section 1551 of the Education Code as enacted by the Legislature at its 1959 Regular Session is amended to read:

1551. The superintendent of each school district shall, in addition to any other powers and duties granted to or imposed upon him:

(a) Be the chief executive officer of the governing board of the district.

(b) Excepting in districts where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare

School dis-
trict super-
intendents

and submit a budget, prepare and submit to the governing board of the district, at such time as it may direct, the budget of the district for the next ensuing school year, and revise and take such other action in connection with the budget as the board may desire.

(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve.

(d) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him to serve in the position to which he is assigned.

(e) Enter into contracts for and on behalf of the district pursuant to Section 15961.

SEC. 2. Section 13566 of said code is amended to read:

Annual
report

13566. Each city or district superintendent of schools shall make an annual report of the schools under his jurisdiction to the county superintendent of schools on forms furnished by the Superintendent of Public Instruction, which report shall include an affidavit that all employees in positions requiring certification qualifications were properly certificated for the work performed.

CHAPTER 459

An act to amend Section 17829 of the Health and Safety Code, relating to housing.

In effect
September
18, 1959

[Approved by Governor May 16, 1959. Filed with
Secretary of State May 18, 1959.]

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

SECTION 1. Section 17829 of the Health and Safety Code is amended to read:

17829. At the time fixed for the hearing of the statement of expense the governing board of the enforcement agency shall consider the statement, together with any objections or protests which may be raised by any of the property owners liable to be assessed for the doing of the work and any other interested persons and thereupon said governing board may make such revision, correction or modification in the statement as it may deem just, after which, by motion or resolution, said report as submitted, or in the event any revisions, corrections or modifications have been ordered made by said governing board then said statement as revised, corrected or modified, shall be confirmed. The board may adjourn said hearings from time to time and its decisions on said statement and on all protests and objections which may be made shall be final and conclusive.

72413. The superintendent of each community college district shall, in addition to any other powers and duties granted to or imposed upon him:

(a) Be the chief executive officer of the governing board of the district.

(b) Excepting in districts where the governing board has appointed or designated an employee other than the superintendent, or a deputy, or assistant superintendent, to prepare and submit a budget, prepare and submit to the governing board of the district, at such time as it may direct, the budget of the district for the next ensuing school year, and revise and take such other action in connection with the budget as the board may desire.

(c) Subject to the approval of the governing board, assign all employees of the district employed in positions requiring certification qualifications, to the positions in which they are to serve. Such power to assign includes the power to transfer an instructor from one campus or college to another campus or college at which the instructor is certificated to serve within the district when the superintendent concludes that such a transfer is in the best interest of the district.

(d) Upon adoption, by the district board, of a district policy concerning transfers of instructors from one campus or college to another campus or college within the district, have authority to transfer instructors consistent with such policy.

(e) Determine that each employee of the district in a position requiring certification qualifications has a valid certificated document registered as required by law authorizing him to serve in the position to which he is assigned.

(f) Enter into contracts for and on behalf of the district pursuant to Section 81655.

(g) Submit reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board at least once every three months during the school year.

72414. The clerk of a community college district shall perform all duties prescribed in Section 72600 not delegated by the governing board to the secretary or to the district superintendent.

72416. In any community college district the governing board of which is required to elect a clerk, the superintendent of schools of the county shall appoint one of the members of the governing board to fill the office of district clerk if a clerk is not elected by the governing board on the date prescribed, or if, except as provided in Section 72417, a vacancy occurs in the position of district clerk.

72417. If the clerk of the community college district refuses to perform the duties prescribed in Section 72600 or by the governing board, the board may at a regular meeting dismiss him and appoint another member clerk. It shall immediately notify the superintendent of schools of the county of its action.

72418. The clerk, secretary, and superintendent of the

report to the district superintendent of schools, or, if no superintendent is employed in the district, to the county superintendent of schools on forms furnished by the board of governors.

87714. Each general superintendent of community colleges shall make an annual report of the schools under his jurisdiction to the county superintendent of schools on forms furnished by the board of governors which report shall include an affidavit that all employees in positions requiring certification qualifications were properly certificated for the work performed.

87715. A full-time contract or regular classroom instructor currently employed by a community college district which decides to maintain classes on Saturday or Sunday, or both, shall not, without his written consent, be required to instruct under such program for more than 180 full days during a school year, or for more than the number of full days the schools of the district were maintained during the year preceding implementation of weekend classes, whichever is greater. This section shall not be construed as limiting the power of any governing board of a community college district to govern the schools of the district, including the assignment of instructors employed by the district. No such classroom instructor shall be assigned to perform services on a Saturday or Sunday if such instructor objects in writing that such assignment would conflict with his or her religious beliefs or practices.

Article 6. Instructor Dismissal Procedures

87730. Governing boards of community college districts shall accept the resignation of any employee and shall fix the time when the resignation takes effect, which shall not be later than the close of the school year during which the resignation has been received by the board.

87731. Whenever any certificated employee of any community college district who, at the time of his resignation, was classified as regular, is reemployed within 39 months after his last day of paid service, the governing board of the district shall, disregarding the break in service, classify him as, and restore to him all of the rights, benefits and burdens of, a regular employee, except as otherwise provided in this code; provided, that time spent in active military service, as defined in Section 87700, subsequent to the last day of paid service shall not count as part of the aforesaid 39-month period; and provided further, that any such employee who has engaged in active military service subsequent to his last paid service and who resigned more than 39 months prior to October 1, 1949, shall be deemed to have complied with all requirements of this section if he is or has been reemployed before July 1, 1950.

87732. No regular employee shall be dismissed except for one or more of the following causes:

- (a) Immoral or unprofessional conduct.

credentials authorized by this article.

(b) A limited service credential may be issued to instructional personnel in accordance with the regulations adopted by the board of governors.

The minimum standards for a limited service credential shall be prescribed by the board of governors.

The regulations adopted by the board of governors prescribing the minimum standards for a limited service credential shall give consideration to training and teaching experience in California schools and shall establish the term of renewal for such a credential.

A limited service credential shall be issued to persons teaching 40 percent or less of the number of hours considered as a full-time assignment for regular employees having similar duties in the community colleges of the district in which he is employed.

Any issuance of a limited service credential shall comply with the provisions of Sections 87214, 87219, 87220, and 87221 with respect to credentials authorized by this article.

87293. The governing board of a community college district may, by resolution, establish administrative and supervisory positions in the classified service not requiring certification where such positions relate to business, research, or community service functions.

87294. A credential or certification document issued pursuant to this article may identify the subject area authorization and the extent or type of service permitted. Such identification shall be made with such requirements as the board of governors may authorize.

87295. The board of governors shall, by regulation, establish minimum standards authorizing service for instructors of classes for adults and shall establish procedures for the issuance of appropriate certificates of qualification.

87296. The Commission for Teacher Preparation and Licensing shall have no authority over or in relation to credentials or certification documents issued pursuant to this article.

87297. The board of governors may issue a community college instructor credential, supervisor credential, librarian credential, counselor credential, health services credential, and student personnel worker credential to any person who has partially fulfilled the minimum requirements for the particular credential on the condition that such person completely fulfill such requirements within a reasonable period of time. The board of governors may by rule establish the requirements for granting a credential under this section and establish the period of time within which the requirements for the credential must be completely fulfilled.

87298. The board of governors shall issue a community college health services credential. The minimum requirements for this credential are all of the following:

(a) Possession of a valid license, certificate, or registration, appropriate to the health service to be designated, issued by the California agency authorized by law to license, certificate, or register persons to practice that health service in California.

CHAPTER 1506

An act relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1984. Filed with Secretary of State September 28, 1984.]

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

SECTION 1. (a) The Legislature finds and declares that the community colleges are a large and important segment of California's system of public higher education. In the last 20 years, community colleges have not only experienced tremendous growth in the numbers of students enrolled, but have undergone a major transition in the types of students served and the types of programs and courses offered. Community colleges have also experienced an unacceptable degree of uncertainty and instability in their revenues over the last decade.

(b) The Legislature further finds and declares that legislative actions regarding community colleges have not been based on a comprehensive policy on the role that community colleges should play in public education. Community colleges have been reacting and responding to narrow changes in state policy that have shaped the functions of the colleges by default, rather than by design.

(c) It is, therefore, the intent of the Legislature to require the Commission for the Review of the Master Plan for Higher Education established pursuant to Senate Bill 1570 of the 1983-84 Regular Session to set the reassessment of the mission of the community colleges as its first and highest priority.

SEC. 2. The study described in this act shall be conducted as follows:

(a) The study shall be an assessment of the mission of the community colleges. The assessment shall include, but not be limited to, all of the following:

(1) A comparison of the statutory directives regarding the programs and activities required to be offered by community colleges, and the programs and activities actually offered by community colleges.

(2) An assessment of, and recommendations regarding, the appropriateness of all of the following programs, courses, and activities to the mission of the community colleges, particularly with respect to the functions of other state educational institutions, and the priorities which should be given to all of the following programs, courses, and activities:

(A) Transfer programs.

(B) Vocational programs.

(C) Programs leading to associate degrees.

- (D) Certificate programs leading to employment.
- (E) General education courses.
- (F) Remedial and basic skills courses.
- (G) Noncredit courses.
- (H) Fee-supported community services courses.
- (I) Student services, including, but not limited to, counseling, testing, job placement, and financial aid.
- (J) Other programs, courses, and activities currently offered by community colleges.

(3) An assessment of the current socioeconomic composition of community college students, and recommendations for methods to ensure that all California residents will have access to community college programs and services.

(4) Policy recommendations designed to ensure that the academic quality of community college programs and courses will be maintained and enhanced.

(5) Other policy recommendations regarding the mission of the community colleges or community college operations the commission deems appropriate.

(b) On or before December 31, 1985, the commission shall submit the findings and recommendations developed pursuant to subdivision (a) to the Joint Committee for the Review of the Master Plan for Postsecondary Education.

SEC. 3. The reassessment study, as specified in Section 2 of this act, shall be directed by the Commission for the Review of the Master Plan for Higher Education.

SEC. 4. Upon completion of the reassessment study authorized by this act, all of the documents and working papers of the commission shall become the property of, and be maintained by, the State Archives.

SEC. 5. This bill shall not take effect unless Assembly Concurrent Resolution 162 and Senate Bill 1570, both of the 1983-84 Regular Session, are also chaptered.

SEC. 6. 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:

In order that the reassessment study required by this act may be completed as expeditiously as possible so that the important problems facing community colleges may be addressed, it is necessary that this act take effect immediately.