

**GUIDELINES FOR IMPLEMENTATION OF  
SECTION 53200-53204 OF TITLE 5 OF THE  
ADMINISTRATIVE CODE OF CALIFORNIA**

**The Role of Academic Senates in the California Community Colleges**

1. QUESTION: What needs to be done to implement the new regulations to strengthen local academic senates?

The senate and the local board or its designee (usually the chancellor, or president and senior administration) need to "consult collegially" on the development of a new district policy for board action to implement the new regulations. This policy can be very general (i.e., a statement that the district will operate according to the provisions of Title 5, Sections 53200-53204) or more specific in terms of how the district carries out the regulations. Different boards and districts may include different amounts of procedural detail in district policies. (However, see recommendations in the third and fourth answers.)

2. QUESTION: In adopting new policies on academic and professional matters, does the governing board have to meet directly with the senate?

No. The governing board and the senate may each designate appropriate representatives as their voices in the mutual development of policies on academic and professional matters, on a blanket basis or on a policy-by-policy basis. It is the responsibility of the designees to communicate with their respective constituencies on an ongoing basis so as to best represent them in the development of policies.

3. QUESTION: The regulations list ten areas defined as "academic and professional matters." The local board must adopt procedures identifying how it will "consult collegially" in these ten areas. Those procedures include either to "rely primarily upon the advice and judgment of the academic senate" or to "reach mutual agreement." Must a local board select only one procedure for addressing all ten of the identified academic and professional matters or can there be a different approach used for the different matters?

Either one of the procedures can be used to address each of the ten areas defined as academic and professional matters; the procedure need not be the same for all ten. It is recommended, although not required, that the specific procedure selected be identified in policy for each of the ten "academic and professional matter."

4. QUESTION: Who decides which of the two processes in the regulations ("rely primarily" or "mutual agreement") should be used on a given issue?

The local governing board. However, it is recommended that the ten categories of academic and professional matters listed in the regulations be the subject of local discussions during the initial implementation of the regulations so that all concerned will know in advance which issues will be dealt with according to which process. These may then be included in adopted policy.

5. QUESTION: If the governing board chooses the option to "rely primarily" on the advice of the academic senate in any of the ten defined areas of "academic and professional matters" is the board required to accept the recommendation of the senate?

No. Title 5 regulations clearly state that in most cases under the "rely primarily" option the recommendation of the academic senate will be adopted. However, there are conditions under which the local board may need to make a decision different from the senate's recommendation. (See next Question and Answer.)

6. QUESTION: A district governing board which chooses the "rely primarily" procedure is normally supposed to accept recommendations of the senate in any of the ten defined areas of "academic and professional matters" unless there are "exceptional circumstances" and "compelling reasons." What do these mean?

The regulations do not define the terms "exceptional circumstances" and "compelling reasons" and these terms are not intended to have a legal definition. These terms mean that boards must usually accept senate recommendations, and that in instances where a recommendation is not accepted the board's decision must be based on a clear and substantive rationale which puts the explanation for the decision in an accurate, appropriate, and relevant context.

Boards tempted to reject a recommendation might, instead, ask the senate to reconsider the recommendation in light of the issues that have not been resolved to the board's satisfaction.

7. QUESTION: A district governing board which chooses the "mutual agreement" procedure is supposed to reach written agreement with the senate in any of the ten defined areas of "academic and professional" matters. When may the board act if it is not able to reach mutual agreement with the academic senate?

If there is no existing policy, the regulations say the board may act without reaching mutual agreement if there are "compelling legal, fiscal, or organizational reasons" why it must do so. Again, the word "compelling" is not defined in the regulations and is not intended to have a legal definition. It means that in instances where mutual agreement with the senate is not reached, a board decision must be based on a clear and substantive rationale which puts the explanation for the decision in an accurate, appropriate and relevant context.

8. QUESTION: When there is an existing policy, is the board permitted to act without mutual agreement?

No If there is an existing policy, that policy simply stays in effect until mutual agreement is reached. However, there may be cases when the existing policy "exposes the district to legal liability or causes substantial fiscal hardship." In these circumstances, a board may act without reaching mutual agreement provided that it has made a good faith effort to reach agreement and has "compelling legal, fiscal, or organizational reasons" to act (as the term "compelling" is described in question 7 above) without waiting any longer for agreement.

9. QUESTION: The "mutual agreement" procedure appears to contain de facto ability to block changes in policy when an existing policy is in place by failing to agree to needed action. What would happen if this occurs?

It would be bad faith to use the regulations in order to block changes in policy when an existing policy is in place by failing to agree to needed action. A senate faced with a board which refuses or fails to participate or consult constructively in the attempt to reach mutual agreement may choose to use the complaint process delineated in question 18. On the other hand, if the senate attempts to use the regulations process to block board action by refusing or failing to participate or consult constructively, it is unlikely that either the

Chancellor or a court would object to a board which takes action without mutual agreement under those circumstances.

10. QUESTION: Can the local board choose the academic senate to be the organization that represents faculty in matters that have previously been collectively bargained or are within the legal scope of bargaining? Can the local board accept recommendations from the academic senate or reach agreements with the academic senate which contradict a collective bargaining agreement?

The answer to both questions is no. The governing board may not legally delegate to the senate any responsibilities or functions which belong to the exclusive representative. AB 1725 did not change collective bargaining law (i.e., EERA, Government Code Section 3540 et sec.) nor the legal scope of bargaining. The regulations specifically point out that nothing in the Board of Governors' regulations may be construed to "detract from any negotiated agreements between collective bargaining and district governing boards."

11. QUESTION: Can a board and union through a collective bargaining agreement change a policy previously adopted by a board based upon recommendation of the academic senate or mutually agreed to with the academic senate?

Yes. Matters appropriately within the scope of collective bargaining may be negotiated between collective bargaining representatives and district governing boards regardless of previous policies.

12. QUESTION: May the collective bargaining agent delegate matters within the scope of bargaining to the local senate and may the senate delegate matters within the scope of the ten defined areas of "academic and professional matters" to the collective bargaining agent?

Yes, to the extent determined by collective bargaining laws. The regulations state that the intent is to "respect agreements between academic senates, and collective bargaining representatives."

13. QUESTION: Must the district consult collegially on the administrative organization chart of the college?

No. How the administration is organized may be a matter for shared governance but is outside the scope of the district's responsibility to "consult collegially@ with the senate.

14. QUESTION: Another one of the ten areas of "academic and professional matters" is "processes for institutional planning and budget development." Does this regulation relate to the institutional plans and budgets themselves or only to the process by which plans and budgets are developed for presentation to the board?

The regulation relates only to the process. The academic senate's role is in helping to shape the processes used for developing the plans and budgets to be acted upon by the governing board. The board is not required to either "rely primarily" on the senate's recommendations or reach agreement with the senate on the plans and budgets themselves.

15. QUESTION: If a local board violates the regulations, will the state Chancellor's Office intervene and/or investigate the case for possible noncompliance?

Probably not. While the Chancellor's Office will probably not become involved in a single

issue within a college district, if a district board develops a pattern of violating the regulations, the Chancellor's Office has the authority to enforce compliance.

16. QUESTION: Do these regulations have the force of law?

Yes. If a district board does not make a good faith effort and does not ultimately abide by these regulations it would be in violation of law.

17. QUESTION: What powers do the Board of Governors have to enforce Title 5 regulations such as the ones on strengthening local senates?

Education Code Section 70901 mandates that the Board of Governors establish minimum conditions entitling districts to receive state aid. Currently there are some 15 minimum conditions that districts must meet in order to receive state funds. The Board of Governors can withhold funding from any district that does not meet established minimum qualifications. One of these minimum conditions is adoption of procedures consistent with sections 53200-53204 of the Administrative Code. Thus one of the minimum conditions that districts must substantially meet in order to receive state aid is to strengthen local academic senates as per the new regulations.

18. QUESTION: If a local senate feels that it has exhausted all sincere internal efforts to work cooperatively with the local governing board and believes the new regulations continue to be ignored what remedies can be sought?

First, the statewide Academic Senate should be contacted for useful advice and direct support. Also, the Senate can make some initial contact with the Chancellor's Office to seek informal resolution if possible. The Academic Senate has established a Standards and Practices Committee that will become increasingly active in documenting, publishing and assisting in the resolution of senate role issues.

Secondly, if the local academic senate believes that there is clear and consistent noncompliance, the local senate may contact the Legal Affairs Office of the Chancellor's Office.

19. QUESTION: Does the term "rely primarily upon the advice and judgment of the academic senate" mean that the governing board should not receive and consider the advice and judgment of others on issues of "academic and professional matters?"

No. Indeed, there are other regulations and laws which address the participation of the public, students, staff and unions in district governance.

20. QUESTION: Should the advice and judgment of the academic senate be accorded greater weight than the advice and judgment of other groups and constituencies in connection with "academic and professional matters?"

Yes. Subject to questions 10, 11, and 12, the intent of the regulations is to ensure that, while all relevant constituencies should have the opportunity to participate, boards must accord the greater weight to academic senates in "academic and professional matters" by "consulting collegially" with the senates, as described in these guidelines.

## **Implementing AB 1725 Requirements, Local Assistance Process**

The following is a joint Academic Senate and CCLC service to locals having problems with the implementation of AB 1725.

The Chancellor's office has identified 26 local district actions which AB 1725 required be implemented. According to a recent survey by the Chancellor's Office, several districts are having difficulty completing the requirements.

Recognizing that some of the difficulty is arising due to misunderstandings of the laws and regulations or to differing interpretations among faculty, administrators, trustees and others, the Academic Senate for California Community Colleges and the Community College League of California have developed a process for assisting colleges in resolving perceived problems in the implementation of certain AB 1725 mandates. To implement the assistance process a joint committee of three faculty and three administrators will be formed. The members will be appointed by the CEOCCC Board of Directors and the Academic Senate Executive Committee. The committee will be co-chaired by the chair of the Academic Senate's Standards and Practices Committee and a chief executive officer appointed by the CEOCCC.

The members of the committee shall be from districts which have a record of successfully implementing the requirements of AB 1725 and individuals who are knowledgeable about AB 1725 and the implementation policies adopted in the districts.

Assistance request forms will be made available to local district chief executive officers and academic senate presidents. It is hoped that the assistance request form will be filed jointly by the CEO, on behalf of the local governing board and the local academic senate president. However, an assistance request submitted by either the CEO or academic senate president will be sufficient to initiate the process.

Upon receipt of this form, the following actions will be initiated:

- 1) The committee co-chairs will receive all assistance request forms and regularly consult with the broader committee to discuss assistance requests.
- 2) Co-chairs will be responsible for initial contact with the appropriate parties in the local district and informal consultation.
- 3) More detailed information gathering, if deemed necessary, will be initiated jointly.
- 4) If warranted, a consultation meeting of appropriate parties in the local district will be convened with the assistance process co-chairs.
- 5) In the event these informal consultation processes are unsuccessful, a technical assistance team composed of faculty and administrators from other campuses who have resolved similar problems will be provided.

A yearly summary of the types of assistance requests received and actions taken will be published jointly. This summary will help to serve as an evaluation of key AB 1725 requirements and the need for changes in the law or regulations to better achieve the original intent of the law.

A copy of the assistance request form may be obtained from the Academic Senate office, (916) 445-4753.

**AB1725 Implementation  
ASSISTANCE REQUEST  
(Academic and Professional Concerns)**

This form is intended to provide faculty and administrators in the California community colleges with a way to request the initiation of a process which may assist colleges in resolving perceived problems in the implementation of AB1725 mandates. It is hoped the form will be filed jointly by the CEO, on behalf of the local governing board, and the local academic senate president. However, a request form submitted by one will be sufficient to initiate the process.

1. Name(s) \_\_\_\_\_
2. Title(s) \_\_\_\_\_
3. College \_\_\_\_\_
4. College Phone \_\_\_\_\_
5. Best time to call \_\_\_\_\_
6. Areas of Concern (Check appropriate area)
  - a. Shared Governance
  - b. Curriculum
  - c. Minimum Qualifications
  - d. Equivalence
  - e. Peer Review
  - f. Administrative Retreat Rights
  - g. Budget Process
  - h. Disciplines
  - i. Hiring
  - j. Tenure
  - k. Evaluation of Administrators
  - l. Other (Please Specify)
7. Request for Actions

On a separate page briefly explain the nature of the problem, how you have tried to solve it and the individual(s) involved.

*Please mail form to:*

Community College League of California  
2017 O Street  
Sacramento, CA 95814

or

Academic Senate for Calif. Comm. Coll.  
1107 Ninth Street, 9th floor  
Sacramento, CA 95814