**Governance Questions**

Question: **What needs to be done to implement the new Title V regulations on district and college governance**?

The local board must establish procedures that are not inconsistent with the Title V regulations to ensure that faculty, staff, and students have the right to participate effectively in district and college governance (Education Code 70901). The governing board or its designee must consult collegially with the academic senate when adopting policies and procedures regarding the participation of the academic senate (Title V, Section 53203).

The policies can be very general (e.g. a statement that the district will operate according to the provisions of Title V) or more specific in terms of how the district carries out the regulations. A wide range of latitude is allowed in the amount of procedural detail in district policies.

Question: **Are students and staff granted responsibilities in the Education Code and Title V similar to those granted the academic senate?**

Yes and no. There are substantial differences between the role of the local academic senate and the role of students and staff as set forth in Title V and the Education Code. The governing board must consult collegially with the academic senate on academic and professional matters. On the other hand, the governing board need only provide staff and students the opportunity to participate effectively in district and college governance.

Students and staff must be provided the opportunity to participate in the formulation and development of district and college policies and procedures that have or will have a significant effect on them. There is much overlap in the areas of concern to the academic senate and those of students and staff. The academic senate is guaranteed a role in the decisionmaking of the governing board. Students and staff are guaranteed a role in the development of policies and procedures.

Question: **Can the local board choose a classified council or classified senate as the organization that represents classified employees in matters that have been collectively bargained or are within the legal scope of bargaining?**

No. The governing board may not legally delegate any responsibilities or functions that belong to the exclusive representative, such as collective bargaining or grievance handling, to any other body such as a classified council or senate. AB 1725 did not change collective bargaining law (see the Educational Employment Relations Act, Government Code Section 3540 et seq.) nor the legal scope of bargaining of the collective bargaining agent. 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 representatives and district governing boards." The most important point is that consultations cannot interfere in the collective bargaining process.

**Question: May the collective bargaining agent delegate responsibilities to a classified council or senate?**

Yes. In fact, many faculty collective bargaining agreements have recognized academic senate roles in areas of decision making - particularly in areas closely related to professional and academic matters. Some unions representing classified employees have also delegated some responsibilities to classified councils. The most important point is that consultation between a governing board and a local academic senate or classified council cannot cover those subjects **that** are within the scope of representation between the collective bargaining agent and the district unless explicitly approved by the exclusive representative.

**Question: Do Classified Councils or Classified Senates have the same recognition under the Educational Employment Relations Act (EERA) as does the Academic Senate?**

No. Under EERA a governing board may meet and negotiate only with the collective bargaining representative concerning matters within the scope of bargaining. **With the specific exception of the Academic Senate,** the collective bargaining agent is the **only** employee organization that is authorized to represent employees in their employment relations with their district. EERA does recognize the right of the academic senate to represent the faculty in making recommendations to the administration **and** governing board of a district with respect to academic and professional matters, so long as this exercise does not conflict with lawful collective agreements (EERA 3540). **There is no parallel language concerning classified councils or classified senates.**

A district may not help with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another (EERA 3543.5). A district could violate **EERA** if it chose to include a classified council or classified senate in the governance processes of **the** district and excluded the classified collective bargaining agent. Restrictions on districts in recognizing representatives of employee groups, other than the collective bargaining agent or **the** academic senate, are spelled out in the Public Employees Relations Board (PERB) decisions **of Antelope Valley (1979), Oak Grove School District** (1986), and **Redwoods Community College District (1987). In** the Redwoods case an employee council was formed to **improve** communications among employees. This employee council was found to be an **"employee** organization". The Public Employees Relations Board (PERB) found that it was unlawful **far** the district to deal with the council **even on matters outside the scope of bargaining** because such action undermined the exclusive representative.

"Employee organization", as defined in Section 3540.1(d) of the Educational **Employment** Relations Act, "means any organization which includes employees of a public-school **employer** and which has as one of its primary purposes representing those employees in their relations with the public-school employer."

"Exclusive representative", as defined in Section 3540.1(e), "means the employee: organization recognized or certified as the exclusive negotiating representative of certified **or** classified employees in an appropriate unit of a public-school employer."

**Question: What items are within the scope of collective bargaining?**

The Public Employees Relations Board **(PERB) had** adopted a "test" to decide **what is** negotiable. In addition to the items listed in EERA (wages, hours of employment, health **and** welfare benefits, leaves, transfer and reassignment policies, safety conditions of **employment,** class size, procedures to be used for the evaluation of employees, procedures for process grievances, layoffs) certain subjects have been found to be within the scope of bargaining. **These** items include affirmative action plans; discrimination; instructional day; promotions; in-service training related to wages, hours, safety, promotional opportunities or job performance; and transfer of bargaining unit work outside the unit.

The "test" (the "Anaheim Test") mentioned above is that a subject is negotiable if (1) it logically and reasonably relates to one of the areas listed in EERA, (2) it concerns both the governing board and the bargaining agent so that conflict is likely and the mediatory influence of negations is the appropriate means of resolving the conflict, and (3) bargaining on the subject would not significantly abridge managerial prerogatives essential to the achievement of the employer's mission.

**Question:** What are the relevant sections of the Education Code and Title 5?

Education Code Section 70902(b) requires that "... the governing board of each community college district shall do all of the following:"

"(b)(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 the academic senate to assume primary responsibility for making recommendations in the areas of curriculum and academic standards."

Title 5 minimum requirements for staff were passed by the Board of Governors on

January 10, 1991. Section 51023(a)(3) requires that "in performing the requirements of
subsections (1) and (2) of this section, the governing board or its designees shall consult with the representatives of **existing** staff councils, committees, **employee organizations** and other such bodies. **Where no groups** or structures for participation exist that provide representation for the purposes of this section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views."

Section 51023.5(a)(7) requires that "the selection of staff representatives to serve on college and district task forces, committees, or other governance groups, shall, **when required by law,** be made by those councils, committees, **employee organizations** or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall be selected from the category they represent."

Section 51023.5(a)(4) requires that "staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff." Section 51023.5(a)(6) requires that "the policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration."

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