

Dear Local Senate Presidents:

In June, a report by California Competes made the argument that participatory governance (sometimes referred to as "shared governance") in the California community colleges needs to be abandoned as control has been surrendered to the faculty, who are not accountable and are not who was elected to govern the colleges. The report "The Road Ahead" contained inaccurate statements regarding how the colleges are governed. In a recent editorial in the San Francisco Chronicle by Robert Shireman (Director, California Competes), he expands upon this theme by attacking a college that offers an example of an institution in crisis, not a model of how governance works in the community college system. City College of San Francisco's (CCSF's) issues do not stem from laws or regulations that empower the faculty and other constituent groups, but from a complex set of issues that the college is actively working to address.

Just as the earlier report contained factual errors (summarized in the attached document), so does Shireman's recent article. The following statement is simply not true: "local college trustees and chancellors are required by law to defer to academic senates on a wide range of topics." Local boards are obligated to consult collegially with the faculty as represented by its academic senate on specified academic and professional matters. The only instances where the board may not act without the mutual agreement of the senate are found in Education Code. None relates to any aspect of institutional governance. Mutual agreement is required with respect to faculty minimum qualifications (87359), the hiring of faculty (87360), and administrator retreat rights (87458). Title 5 is explicit in indicating that the board can choose to not accept the recommendations of the academic senate. CCSF's trustees are in no way obligated to "rubber stamp" anything.

Based on Mr. Shireman's reasoning, any single instance of a governance system that is not working well is a reason to revisit the basic principles of that system. Based on this logic, we should be abandoning democracy, as efforts to implement it do not always proceed smoothly. CCSF is just one of 112 colleges in the state that make up our 72 districts and is not the instance upon which judgments about participatory governance should be made. And while engaging in participatory governance is not always easy, shared decision making remains a principle to stand by. We believe in the value of the active engagement of all constituency groups in developing recommendations to be considered by our local boards. While a senate leader standing up for participatory governance could be viewed as "self-serving", I would argue that it is "system-serving" in that the best outcomes are ultimately achieved when the decisions made at our colleges are the product of processes that ensure informed decisions with buy-in from all impacted parties.

Attached you will find a summary of the issues in the original report and a compilation of the relevant components of Title 5 and Education Code. Participatory governance has served us well and will continue to do so. While we can easily discuss the value of participatory governance in a philosophical manner, having concrete examples of instances of significant participatory governance "wins" would serve us well. With that in mind, we invite you to share your examples at info@asccc.org.

Regards,

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ASCCC Providing leadership, empowerment and voice to California community college faculty

Comments and notes on “The Road Ahead”
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“The Road Ahead,” a report prepared by “California Competes,” proposes an alteration in local governance to correct the dysfunction created by “institutional control by unelected, unaccountable faculty councils.” If there is a local district that is operating in this manner, that is a local issue, not a product of statewide regulations intended to ensure the effective participation of the campus community in decisions that impact it. The assertion highlighted in the excerpt below is factually incorrect, as explained in the narrative that follows:

In implementing the new requirements, however, the statewide Board of Governors wrote regulations that turned a consultation requirement into a requirement for mutual agreement between governing boards and academic senates. This vested academic senates with the formal power to prevent and stall progress on many district and college policies. The regulations have, in effect, bestowed decision-making authority upon academic senates without creating the commensurate processes for holding them accountable to the public for the decisions that are made (and not made).

This extreme presumption in favor of the status quo, and in favor of 50%-plus-one of voting faculty members, stands even if the policies are inimical to the interests of current students, potential students, the community and taxpayers. In one district, the lack of clarity about roles and responsibilities created constant disagreements about how to reach decisions: instead of taking a few months to develop a strategic plan the process took two and a half years. Meanwhile, students were not being adequately served. It leaves college leaders to wonder, “What would the public say if they knew how much it was costing? Would we lose the public trust if they knew?”

Education Code 70902 (b) (7) states that local governing boards will “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, to ensure that these opinions are given every reasonable consideration, to ensure the right to participate effectively in district and college governance, and to ensure the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.” The obligation to permit “effective participation” of faculty, staff, and students, as well as the right of academic senates to “assume primary responsibility for making recommendations in the areas of curriculum and academic standards,” is then further delineated in Title 5 regulations. Complete Education Code and Title 5 citations are provided below.

Education Code acknowledges that faculty should play a special role in governance and that the faculty, by means of academic senates, should have primary responsibility with respect to those matters identified as being within the academic senate's purview. The purview of academic senates and the mechanism for ensuring their "primary responsibility for making recommendations"—not decisions—is clearly delineated in Title 5. The "curriculum and academic standards" referenced in Education Code are referred to as "academic and professional matters" in Title 5 § 53200:

(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 self-study 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 are mutually agreed upon between the governing board and the academic senate.

Faculty do not have a special role in making decisions with respect to institutional planning and budget development (10) but rather in the processes through which such decisions are made. In addition to the ten items delineated in Title 5, local boards and academic senates may agree that the academic senate has primary responsibility for making recommendations in other areas. This same Title 5 section (53200) clearly states that the role of the senate is to make recommendations:

(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.

The regulations have not “bestowed decision-making authority upon academic senates”; they have established parameters to ensure the appropriate role of faculty in decision-making processes. And, while local boards may opt to use mutual agreement as their form of collegial consultation on any of the “10 + 1” matters in the senate purview, this fact does not prohibit the board from acting absent agreement. The options for how a board may collegially consult are identified in 53200:

(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) agreeing 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.

Further explanation of both “rely primarily” and “mutual agreement” is provided in § 53203. Both forms of consultation permit the board to act absent the concurrence of the senate:

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

The only instances where the board may not act without the mutual agreement of the senate are found in Education Code. None relates to any aspect of institutional governance. Mutual agreement is required with respect to faculty minimum qualifications (87359), the hiring of faculty (87360), and administrator retreat rights (87458).

Existing Education Code and Title 5 regulations are designed to ensure the effective participation of the campus community in decision-making and to ensure that those campus constituencies with relevant expertise hold a primary role in developing recommendations in various areas. Recommendations regarding operations and resource allocation are developed based on the expertise of administrators and staff who have training and experience in these areas. Recommendations directly involving curriculum development and implementation may, at the discretion of the district, be based primarily on the expertise of faculty members whose training and experience are most relevant to such matters. Recommendations regarding other matters involving professional standards may be developed jointly by administration, faculty, and, in some cases, staff and students, thus bringing all relevant perspectives and expertise to the process. Far from slowing down decision-making processes, the consultative system for developing recommendations outlined in Education Code and Title 5 ensures that colleges make decisions through procedures that are thoughtful, logical, and as fully informed as possible.

Nevertheless, the final decision to accept or reject recommendations remains in the hands of the local board of trustees. The claim that faculty are granted decision-making authority without accountability is simply inaccurate. Local boards are accountable for the actions of districts, while the employees of the district are accountable to the local board, and final decision-making power rests with the governing boards elected by the public to lead the colleges.

References:

Education Code

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) (i) 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. (ii) 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) (A) Review and approve all educational programs offered by community college districts. The board of governors shall adopt regulations defining the conditions under which a community college district may offer, without the need for approval by the board of governors, a credit course that is not part of an approved educational program. Regulations adopted under this paragraph shall ensure that appropriate safeguards involving training and monitoring are in place, and shall ensure that the authority to offer credit courses that are not part of an approved educational program does not have the effect of permitting community college districts to operate educational programs without the approval of the board of governors. (B) In a manner that is consistent with the regulations adopted by the board of governors under this paragraph, the chancellor shall monitor courses approved pursuant to the act that adds this subparagraph. The chancellor shall prepare and submit a report to the chairpersons of the appropriate policy and fiscal

committees of the Legislature on or before January 1, 2013. This report shall include, but not necessarily be limited to, a description of the results of the monitoring and the extent to which community college districts have complied with applicable regulations of 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. (f) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date. **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 of those purposes, 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) (i) 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. (ii) 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. (f) This section shall become operative on January 1, 2014. **70901.1.** The Board of Governors of the California Community Colleges shall adopt regulations that permit the governing board of a community college district to allow applications for admission, student residency determination forms, and other documents to be submitted electronically. The regulations shall require that applicants and students be informed of the relative security of the information they submit electronically. **70901.2.** (a) Notwithstanding any other provision of law, when a classified staff representative is to serve on a college or district task force, committee, or other governance group, the exclusive representative of classified employees of that college or district shall appoint the representative for the respective bargaining unit members. The exclusive representative of the classified employees and the local governing board may mutually agree to an alternative appointment process through a memorandum of understanding. A local governing board may consult with other organizations of classified employees on shared governance issues that are outside the scope of bargaining. These organizations shall not receive release time, rights, or representation on shared governance task forces, committees, or other governance groups exceeding that offered to the exclusive representative of classified employees. (b) A local governing board shall determine a process for the selection of a classified staff representative to serve on those task forces, committees, or other governance groups in a situation where no exclusive representative exists. **70901.5.** (a) The board of governors shall establish procedures for the adoption of rules and regulations governing the California Community Colleges. Among other matters, the procedures shall implement the following requirements: (1) Written notice of a proposed action shall be provided to each community college district and to all other interested parties and individuals, including the educational policy and fiscal committees of the Legislature and the Department of Finance, at least 45 days in advance of adoption. The regulations shall become effective no earlier than 30 days after adoption. (2) The proposed regulations

shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government **Code**, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies. (3) The board of governors shall ensure that all proposed regulations of the board meet the standards of "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication," as those terms are defined in Section 11349 of the Government **Code**. A district governing board or any other interested party may challenge any proposed regulatory action regarding the application of these standards. (4) Prior to the adoption of regulations, the board of governors shall consider and respond to all written and oral comments received during the comment period. (5) The effective date for a regulation shall be suspended if, within 30 days after adoption by the board of governors, at least two-thirds of all governing boards vote, in open session, to disapprove the regulation. With respect to any regulation so disapproved, the board of governors shall provide at least 45 additional days for review, comment, and hearing, including at least one hearing before the board itself. After the additional period of review, comment, and hearing, the board may do any of the following: (A) Reject or withdraw the regulation. (B) Substantially amend the regulation to address the concerns raised during the additional review period, and then adopt the revised regulation. The regulation shall be treated as a newly adopted regulation, and shall go into effect in accordance with those procedures. (C) Readopt the regulation as originally adopted, or with those nonsubstantive, technical amendments deemed necessary to clarify the intent of the original regulation. If the board of governors decides to readopt a regulation, with or without technical amendments, it shall also adopt a written declaration and determination regarding the specific state interests it has found necessary to protect by means of the specific language or requirements of the regulation. A readopted regulation may then be challenged pursuant to existing law in a court of competent jurisdiction, and shall not be subject to any further appeal within the California Community Colleges. (6) As to any regulation which the Department of Finance determines would create a state-mandated local program cost, the board of governors shall not adopt the regulation until the Department of Finance has certified to the board of governors and to the Legislature that a source of funds is available to reimburse that cost. (7) Any district or other interested party may propose a new regulation or challenge any existing regulation. (b) Except as expressly provided by this section, and except as provided by resolution of the board of governors, the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government **Code** shall not apply to regulations adopted by the board of governors.

70902. (a) (1) 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 or activity, or may otherwise act, in any manner that is not in conflict with, inconsistent

with, or preempted by, any law, and that is not in conflict with the purposes for which community college districts are established. (2) 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 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) (A) Establish policies for and approve credit courses of instruction and educational programs. The educational programs shall be submitted to the board of governors for approval. A credit course of instruction that is not offered in an approved educational program may be offered without the approval of the board of governors only under conditions authorized by regulations adopted by the board of governors. (B) 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, 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, to ensure that these opinions are given every reasonable consideration, to ensure the right to participate effectively in district and college governance, and to ensure 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. However, 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. (e) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date. **70902.** (a) (1) 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. (2) 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 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 that are consistent 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, to ensure that these opinions are given every reasonable consideration, to ensure the right to participate

effectively in district and college governance, and to ensure 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. However, 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. (e) This section shall become operative on January 1, 2014.

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.

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.

87458. A person employed in an administrative position that is not part of the classified service, who has not previously acquired tenured status as a faculty member in the same district and who is not under contract in a program or project to perform services conducted under contract with public or private agencies, or in other categorically funded projects of indeterminate duration, shall have the right to become a first-year probationary faculty member once his or her administrative assignment expires or is terminated if all of the following apply: (a) The process by which the governing board reaches the determination 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 the administrator possesses the minimum qualifications for employment as a faculty member. 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. (b) Until a joint agreement is reached pursuant to subdivision (a), the district process in existence on January 1, 1989, shall remain in effect. (c) The administrator has completed at least two years of satisfactory service, including any time previously served as a faculty member, in the district. (d) The termination of the administrative assignment is for any reason other than dismissal for cause. (e) This section shall apply to every educational administrator whose first day of paid service in the district as a faculty member or an administrator is on or after July 1, 1990.

Title 5

◆ § 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;
- (7) faculty roles and involvement in accreditation processes, including self-study 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 are 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) agreeing 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.

§ 53203. Powers.

(a) The governing board of a community college district shall adopt policies for appropriate delegation of authority and responsibility to its college and/or district academic senate. Among other matters, said policies, at a minimum, shall provide that the governing board or its designees will consult collegially with

the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations.

(b) In adopting the policies and procedures described in Subsection (a), the governing board or its designees shall consult collegially with representatives of the academic senate.

(c) While in the process of consulting collegially, the academic senate shall retain the right to meet with or to appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.

(d) The governing board of a district shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted. If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.

(2) in instances where the governing board elects to provide for mutual agreement with the academic senate, and agreement has not been reached, existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship. In cases where there is no existing policy, or in cases where the exposure to legal liability or substantial fiscal hardship requires existing policy to be changed, the governing board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

(e) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board of the district pursuant to Subsection (a).

(f) The appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate. Notwithstanding this Subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups.

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