



Part II: Roles and Responsibilities of the Academic Senate

This section of the handbook deals with the legal underpinnings which define and support the operation of academic senates. The first part of this section, [The Legal Basis: Education Code, Title 5, Accreditation, and Local Implementation](#) explains pertinent legislation, California Education Code, Title 5 Regulations, and local board of trustees' policies and regulations. The second part of this section, [College Governance, Senate/Collective Bargaining Unit Relations, and Senate Roles in Accreditation](#), presents effective practices and information regarding collegial consultation, building and maintaining effective relationships between senates and collective bargaining units, and the role of the senates in accreditation.

The Legal Basis: Education Code, Title 5, Accreditation, and Local Implementation

The rules governing the operations of California community colleges come from a number of sources. The roles and responsibilities of local academic senates and faculty are spelled out in several places:

- **Legislation:** Legislation originates in either the California Senate or the Assembly. If the piece of legislation originates in the Assembly, it is referred to with the prefix “AB” and the bill number (*e.g.*, AB 1725). If a legislative bill originates in the Senate, it is referred to with the prefix “SB” and the bill number (*e.g.*, SB 860). Bill numbers are reused in each legislative session; for example, AB 1725 in 1988 famously dealt with community college reform, whereas in the 2013-14 session AB 1725 was a bill regarding mental health hearings for the gravely disabled. The legislation language provides the intent of the legislation and specifics of which codes should be amended or created.
- **Education Code:** When a piece of legislation pertaining to education is passed by the legislature and not vetoed by the governor, it is “chaptered” into the California Education Code. The requirements found in the California Education Code are therefore a result of legislation and can be modified only by subsequent legislative action. They appear in their full text, including the intent language of the original authors, on the legislature’s website [California Legislative Information](#) website.

California Education Code is divided into three sections:

- Title 1. General Education Code Provisions [1 - 32500]
- Title 2. Elementary and Secondary Education [33000 – 64100]
- Title 3: Postsecondary Education [66000 – 101060]

Most of the codes pertaining to the California Community College will be found in two sections:

- Education Code. Part 40. Title 3, Chapter 9. Community Colleges, Section 66700 – 66764
- Education Code. Division 7. Community Colleges, Section 70900 - 88651

While most of the codes pertaining to California Community Colleges may be found in sections 66700 to 66764, other codes pertaining to community colleges may be found throughout the California Education Code. The [California Legislative Information](#) website has a powerful search feature to help locate specific codes. The California Education Codes change as new legislation is chaptered, usually on January 1 of each year, and a senate president should always check the [California Legislative Information](#) website for the most up-to-date Education Codes.

- **Title 5:** The California Community College Board of Governors codifies the rules for the implementation of Education Code in Title 5. Title 5 is published as part of the [California Code of Regulations](#). These regulations have the force of law, though they can be modified by action of the Board of Governors without legislative intervention. Most of the sections regarding California Community Colleges will be found in *Division 6: Community Colleges* of Title 5. Because Title 5 can be changed more easily and frequently than Education Code, local academic senate presidents need to check for the most up-to-date versions on the official [California Code of Regulations](#) website.
- **Standing Orders:** The Board of Governors enacts “Standing Rules” that instruct the Chancellor’s Office on how to carry out its functions. The Standing Rules of the Board of Governors are reviewed annually and may be found on the [State Chancellor’s Website](#).

The [Legislative Index](#) (2015), created by former ASCCC President Kate Clark, contains an index of topics “cross-walked” from the intent expressed in the legislation *Community College Reform Act* (AB 1725, Vasconcellos, 1988), to sections in the California Education Code and then to the specific sections in Title 5.

DEFINING AND UNDERSTANDING THE ROLE OF THE ACADEMIC SENATE: SELECTED PASSAGES FROM THE CALIFORNIA EDUCATION CODE SPECIFYING THE ROLES OF THE ACADEMIC SENATE

The following section highlights some of the significant segments of the California Code of Regulations with links to the sections on the [California Legislative Information](#) website. Education Code changes with new legislation, so this handbook hyperlinks to the most current versions of the codes, rather than excerpting them here. These important legal strictures are designed to ensure faculty’s full participation in the educational and governance processes at community colleges.

- [Education Code: § 70902 \(b\)\(7\) Governing Boards; Delegation](#)
Requires the local Board of Trustees to establish procedures to ensure effective participation.
- [Education Code: § 87359 \(b\) Waiver Of Minimum Qualifications; Equivalency](#)
Requires the local Board of Trustees to rely primarily upon the advice of the senate regarding faculty meet minimum qualifications.
- [Education Code: § 87360 \(b\) Hiring Criteria](#)
Requires the local Board of Trustees to develop hiring criteria, policies, and procedures for new faculty members.
- [Education Code: § 87458 \(a\) Administrative Retreat Rights](#)
Requires the local Board of Trustees to rely primarily upon the advice and judgment of the academic senate regarding procedures regarding administrators retreating into faculty positions.
- [Education Code: § 87610.1\(a\) Tenure Evaluation Procedures](#)
Requires that collective bargaining agents, or faculty collective bargaining units, consult with the academic senate prior to negotiating tenure evaluation procedures.

- **Education Code: § 87663 (f) Evaluation Procedures**
Requires that collective bargaining agents, or faculty collective bargaining units, consult with the academic senate prior to negotiating faculty evaluation procedures.
- **Education Code: § 87743.2 Faculty Service Areas**
Requires that collective bargaining agents, or faculty collective bargaining units, consult with the academic senate prior to negotiating Faculty Service Areas (FSA).

See [Local Academic Senate/Collective Bargaining Unit Relations](#) (Part II.A.5 of this handbook) for a discussion on how collective bargaining unit-senate consultation may differ from the “collegial consultation” in which senates and administrations engage.

DEFINING AND UNDERSTANDING THE ROLE OF THE ACADEMIC SENATE: SELECTED PASSAGES FROM CALIFORNIA TITLE 5 SPECIFYING THE ROLES OF THE ACADEMIC SENATE

The following section excerpts some of the significant segments of Title 5, *Division 6: California Community Colleges*. The [California Code of Regulations website](#) is maintained by Thomson Reuters, which does not create persistent links to sections of Title 5. While Title 5 changes often and one should always check the website for the most current version, local academic senate leaders can find the fundamental structure of how academic senates should and may interact with boards of trustees in Title 5, Division 6, Chapter 4 Employees, Subchapter 2 Certificated Positions, Article 2 Academic Senate

TITLE 5: §53200 Definitions

Academic Senate means an organization whose primary function is to make recommendations with respect to academic and professional matters.

Academic and Professional matters (also known as the “10+1”) means the following policy development matters:

1. Curriculum, including establishing prerequisites.
2. Degree and certificate requirements.

3. Grading policies.
4. Educational program development.
5. Standards or policies regarding student preparation and success.
6. College governance structures, as related to faculty roles.
7. Faculty roles and involvement in accreditation processes.
8. Policies for faculty professional development activities.
9. Processes for program review.
10. Processes for institutional planning and budget development.
11. Other academic and professional matters as mutually agreed upon.

Consult Collegially means that the district governing board shall develop policies on academic and professional matters through either or both of the following:

1. Rely primarily upon the advice and judgment of the academic senate, OR
2. The governing board, or its designees, and the academic senate shall reach mutual agreement by written resolution, regulation, or policy of the governing board effectuating such recommendations.

TITLE 5: §55202 Formation; Procedures; Membership

The following procedure shall be used to establish an academic senate:

- (a) The full-time faculty of a community college shall vote by secret ballot to form an academic senate.
- (b) In multi-college districts, the full-time faculty of the district colleges may vote on whether or not to form a district academic senate. Such vote shall be by secret ballot.
- (c) The governing board of a district shall 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.
- (2) Provide for the selection, in accordance with accepted democratic election procedures, the members of the academic senate.
- (d) The full-time faculty may provide for the membership and participation of part-time faculty members in the academic senate.
- (e) In the absence of any full-time faculty members in a community college, the part-time faculty of such community college may form an academic senate.

TITLE 5: §53203 Powers

- (a) The governing board shall adopt policies for the appropriate delegation of authority and responsibility to its college academic senate.
- (b) In adopting the policies described in section (a), the governing board or designees, shall consult collegially with the academic senate.
- (c) While consulting collegially, the academic senate shall retain the right to meet with or appear before the governing board with respect to its views and recommendations. In addition, after consultation with the administration, the academic senate may present its recommendations to the governing board.
- (d) The governing board shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:
 - (1) When the board elects to rely primarily upon the advice and judgment of the academic senate, the recommendation of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted.
 - (2) When the board elects to provide for mutual agreement with the academic senate, and an agreement has not been reached, existing policy shall remain

in effect unless such policy exposes the district to legal liability or fiscal hardship. In cases where there is no existing policy, or when legal liability or fiscal hardship requires existing policy to be changed, the 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.
- (f) The appointment of faculty members to serve on college committees shall be made, after consultation with the chief executive officer or 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.

TITLE 5: §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.

In addition to these regulations, other sections of the Education Code identify responsibilities the academic senate has, for example, in working with the local bargaining agent, in considering staff and student input, and in meeting both obligations and privileges delegated to the senate.¹

¹ Local bargaining agents (unions) may also negotiate the ability to appoint faculty to committees.

INCORPORATING THE LAW AT THE LOCAL LEVEL: BOARD POLICY, REGULATIONS, AND DELEGATION OF AUTHORITY

Board Policy, Regulations, and Administrative Procedures

The state laws and regulations noted above are put into operation at the local level by the local board of trustees. Education Code and Title 5 Regulations grant certain powers and call for specific actions on the part of local boards. Local boards of trustees codify the operations of their colleges and districts by formally adopting board policies. One purpose of board policies is to define how external regulations and policies (Federal Code, California Education Code, Title 5, Accreditation standards, etc.) will be executed at the local level. Board policies inform chancellors, college presidents, and administrations on how the local board of trustees has decided to locally implement federal and state requirements and the approved methods by which the district and colleges may operate.

Board policies are often broad, providing the umbrella definition or intent for compliance with a federal or state requirement. The procedure by which a college or district will follow the requirements is often enumerated in companion board regulations or administrative procedures. Practices and terminology regarding board policies, regulations, and procedures differ among various districts.

State laws and regulations often clearly stipulate the role that a local academic senate must play in formulating and revising local policies and regulations, particularly if they were generated by mutual agreement between the board and a senate. While many districts post their local policies and regulations on their websites, senate presidents should secure full and current copies of these documents for their local academic senate files and ask for periodic updates to ensure that the senate's copies accurately reflect any recent board action. In addition, local academic senates should work with their administration to ensure that they are consulted as a part of the board policy and regulation review and creation processes, especially in regard to policies and regulations which impact academic and professional matters ("10+1") covered under [Title 5 Definitions](#).

Delegation of Authority

For an academic senate, the most significant board policy is that which establishes the delegation of authority and responsibility in decision making in accordance with [Title 5](#). Title 5 [§53203\(a\)](#) stipulates,

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.

The Community College League of California (CCLC) Board Policy Service² provides subscribing districts with templates and a common board policy numbering system. This service is used by a majority of college districts, and the template for Board Policy 2510 and Regulation/Administrative Procedure 2510 contain the district’s effective participation policies. An example of the CCLC’s model board policy on effective participation may be found in the supporting document [CCLC Sample Board Policy on Participation in Local Decision Making](#) (CCLC, 2014). College districts that do not use the CCLC templates either do not have a specific policy delegating authority to the academic senate or have used an alternative number for the policy.

The intent of the [Community College Reform Act](#) (AB 1725, Vasconcellos, 1988) as enacted in Title 5 §53200 through [§53203](#) and local policy is to assure “effective participation” of all college constituencies and to ensure that the local governing board engages in “collegial consultation” with the academic senate on matters that are academic and professional in nature. Although local policies that enact these Title 5 sections are often called “shared governance” policies, the term “shared governance” does not appear in statute and, in fact, may contribute to misunderstandings. Moreover, some administrators or other parties may misinterpret the regulations to call for equal voice or mandatory consensus on all matters, even on academic and professional matters over which the

² For more information on the CCLC Board Policy service see the document *CCLC-Policy Service* on the ASCCC website.

faculty have purview and primacy. “Effective participation” means that affected parties must be afforded an opportunity to review and comment upon recommendations, proposals, and other matters. This right of all college constituencies to participate effectively in discussions extends to the academic and professional matters delineated in Title 5, and therefore the academic senate is bound to hear and give due consideration to such input; however, the academic senate retains its primacy regarding academic and professional matters and is not bound to adopt, accommodate, or reach consensus on concerns raised by other constituent groups. To attest to the fact the senate has afforded other groups opportunity to review proposals, the senate may wish to adopt a procedure and sign-off sheet; for an example, see [Samples of Decision Review Sign-off Sheets](#) (ASCCC, 2014).

Academic senates should review local policy annually so that all senators understand which of the “10 +1” academic and professional matters are defined as “rely primarily” and which are “mutually agreed” upon. The applications of these two levels of collegial consultation differ significantly, with each offering its own advantages and restrictions. If a governing board rejects the recommendation of the senate in regard to issues which fall within the “10 + 1” items, Title 5 has different requirements for the board to meet depending on whether the recommendation regards an item on which the board has agreed to “rely primarily upon the advice and judgment of the academic senate” or the item is one on which the governing board has elected to “provide for mutual agreement with the academic senate.”

If, for example, a governing board has elected to “rely primarily” upon the recommendation of a local academic senate for one or more of the “10 + 1” items, the board must ordinarily accept the senate’s recommendations, except when “exceptional circumstances and compelling reasons” may exist. [Participating Effectively in District and College Governance](#) (ASCCC & CCLC, 1998), a document written by a joint task force of representatives of the California Community College Trustees (CCCT), the Chief Executive Officers of the California Community Colleges (CEOCCC) and the Academic Senate for California Community Colleges, makes the following point about the concepts “exceptional circumstances” and “compelling reasons”:

The regulations do not define the terms... and these terms are not intended to have a legal definition outside the context of this law... These terms mean that...

in instances where a recommendation is not accepted[,] the reasons for the board’s decision must be in writing and based on a clear and substantive rationale which puts the explanation for the decision in an accurate, appropriate, and relevant context. (p. 4, Question 12) [Note: for a full copy of these discussions, please visit the [Participating Effectively in District and College Governance](#) (ASCCC & CCLC, 1998).

Likewise, if the governing board has elected to reach mutual agreement with the academic senate for one or more of the “10 + 1” items, the board can act without such agreement having been reached, as [Participating Effectively in District and College Governance](#) explains:

On the other hand, where the board has adopted a policy of mutual agreement on any or all of the “10 + 1” items, the board may not act without having reached agreement with the senate, except 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 without waiting any longer for agreement. (p. 5, Question 14)

The following chart offers a graphic representation of the differing requirements for board action in the absence of successful collegial consultation with the academic senate:

	PRIMARILY RELY UPON	MUTUALLY AGREE UPON
Board Rejects Only for:	Exceptional Circumstances Compelling reasons	After Good Faith Effort If district exposed to compelling: Fiscal Hardship Legal Liability Organizational reasons
Board must:	Provide a written explanation.	No written explanation required

To avoid such action by the local board, senate and administration should come to an agreement on process and definitions before a conflict over a policy develops:

- The senate and the administration should establish a clear understanding regarding which of the 10+ 1 items on which the board has elected to rely primarily upon the advice and judgment of the senate and on which they will seek to reach mutual agreement with the senate. This agreement is normally defined in local board policy or regulation.

The administration and the senate should define the terms of Title 5 [§53203](#) by establishing what constitutes the following:

- An exceptional circumstance
 - A compelling reason
 - A good faith effort
 - Organizational reasons
 - The threshold for fiscal hardship and legal liability
- A process should be established through which items that qualify as academic and professional matters (“10+1”), or other academic and professional matters as mutually agreed upon, can be identified and conflicts over whether an item qualifies as a academic and professional matters (“10+1”) issue can be resolved.
 - The formal process should be established through which the senate may request a written explanation if the board rejects an item on which it has agreed to primarily rely upon the senate’s recommendation.

While not required by Title 5 [§53203](#) an effective practice to maintain relations between the senate and administration is to build a process through which the senate may request written explanation on “mutually agree upon” items on which the board has elected to move forward without the agreement of the senate.

The ASCCC Relations with Local Senates Committee has compiled a series of resources to assist local academic senates in working with their boards:

- A document which contains samples of California Community College districts’ Board Policies, [Compiled Board Policies on Participatory Governance and Decision Making](#) (ASCCC, 2014), and Regulations on Effective participation which shows how different districts have approached creating policy language defining how the senate and administration should work together.
- Decision-making handbooks from various colleges are available in the Resource Documents section at the bottom of the [ASCCC Leadership Resources](#) page.
- [When the Board of Trustees Says “NO!”](#) (ASCCC, 2014), a guide to options for a senate after a Board of Trustees has rejected a recommendation from the senate.

College Governance, Senate/Collective Bargaining Unit Relations, and Academic Senate Roles in Accreditation

GOVERNANCE, EFFECTIVE PARTICIPATION, AND COLLEGIAL CONSULTATION³

The basis of the governance system in the California Community Colleges emanates from a fundamental belief in the importance of participatory decision-making. Education Code §70902(b)(7) directs local Boards of Trustees to “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...” The most critical words in this passage are “participate effectively”: all college constituencies have a right under Education Code to have their voices heard and their positions given fair consideration before a local board act on an issue.

The Academic Senate’s 2009 paper *California Community Colleges: Principles and Leadership in the Context of Higher Education* offers the following characterization of the community college governance process:

³ Academic Senate for California Community Colleges. (2009). *California Community Colleges: Principles and leadership in the context of higher education*. ASCCC. http://asccc.org/sites/default/files/publications/PrinciplesLeadership_0.pdf