

In the Supreme Court of the State of California

**COAST COMMUNITY COLLEGE
DISTRICT, et al.,**

Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES,

Defendant and Respondent,

DEPARTMENT OF FINANCE,

Real Party in Interest and Respondent.

Case No. S262663

Third Appellate District, Case No. C080349
Sacramento County Superior Court,
Case No. 34-2014-80001842CUWMGDS
The Honorable Christopher E. Krueger, Judge

REQUEST FOR JUDICIAL NOTICE

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TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-
SAKAUYE:

Pursuant to Rules 8.520(g) and 8.252(a) of the California Rules of Court, Real Party in Interest and Respondent Department of Finance moves this Court to take judicial notice of certain materials cited in the Department's Opening Brief on the Merits.

This motion is made on the following grounds:

1. Evidence Codes sections 452 and 459 authorize this Court to take judicial notice of the materials set forth in this motion;
and

2. The materials are relevant to the issues addressed in the Department's brief.

This motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Samuel Harbourt, and the attached exhibit, which is a true and correct copy of the document described.

Dated: Nov. 12, 2020

Respectfully submitted,

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/s/ Samuel T. Harbourt

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Evidence Code, sections 452 and 459, and California Rules of Court, rules 8.252(a) and 8.520(g), Real Party in Interest and Respondent Department of Finance hereby requests that this Court take judicial notice of the following document:

Exhibit A, analysis and commentary on amendments to a number of regulations contained in Title 5 of the California Code of Regulations, including section 51102. These amendments were considered by the Board of Governors of the California Community Colleges in January 2006; filed on March 15, 2006; and became effective on April 14, 2006. A true and correct copy of this exhibit is attached to the accompanying declaration.

II. THE EVIDENCE CODE AND THE RULES OF COURT AUTHORIZE JUDICIAL NOTICE OF THE EXHIBIT

The document that is the subject of this request is relevant to this matter for the reasons explained in the Department's Opening Brief on the Merits. Exhibit A is a document from a regulatory history file maintained by the Office of the Chancellor of the California Community Colleges. The document provides analysis and commentary regarding an amendment to section 51102 of Title 5 of the California Code of Regulations, adopted by the Board of Governors of the California Community Colleges in 2006. For reasons explained in the Department's Opening Brief, section 51102 is relevant to the first issue presented in this case,

and the analysis and commentary in Exhibit A may be helpful to the Court in interpreting and understanding section 51102.

Pursuant to Evidence Code section 452, this Court may take judicial notice of regulatory history materials, including analysis and commentary drafted for an administrative agency's consideration in deciding whether to adopt amendments to a regulation. (See 31 Cal.Jur.3d Evidence § 26; e.g., *Cal. Pub. Employees' Retirement System v. Superior Court* (2008) 160 Cal.App.4th 174, 182, disapproved on other grounds by *State Bd. of Chiropractic Examiners v. Superior Court* (2009) 45 Cal.4th 963.) Exhibit A was not presented to the superior court or the court of appeal. Nor does it relate to proceedings occurring after the order that is the subject of this appeal. A copy of Exhibit A is filed and served with this motion. (Rules of Court, rule 8.252(a)(3).)

III. CONCLUSION

For these reasons, the Department respectfully requests that the Court take judicial notice of the exhibit described above.

Dated: Nov. 12, 2020

Respectfully submitted,

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/s/ Samuel T. Harbourt

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DECLARATION OF SAMUEL HARBOURT

I, Samuel T. Harbourt, declare:

1. I am a Deputy Solicitor General in the Office of the Solicitor General, California Attorney General's Office, California Department of Justice. I am one of the attorneys representing the Department of Finance in this matter. I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. I execute this declaration pursuant to California Rules of Court, rules 8.252 and 8.54(a)(2), which require a motion for judicial notice of matters outside the record to be accompanied by a supporting declaration.

3. The information provided in this declaration, as well as the accompanying memorandum of points and authorities, is sufficient to allow the Court in its discretion to take judicial notice of the document attached as Exhibit A, as that exhibit may assist the Court in ruling on the appeal.

4. **Exhibit A** is a document from the regulatory history file for amendments adopted by the Board of Governors of California Community Colleges in 2006. The amendments altered a number of regulations contained in Title 5 of the California Code of Regulations, including section 51102. The regulatory history file is maintained by the Office of the Chancellor of California Community Colleges. At my request, an employee of the Chancellor's Office accessed the file and sent its contents to me my e-mail on October 8, 2020. A true and correct copy is attached as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration in San Francisco, California on November 12, 2020.

/s/ Samuel Harbourt

SAMUEL T. HARBOURT
Deputy Solicitor General
*Attorney for Real Party in
Interest and Respondent
Department of Finance*

EXHIBIT A

TITLE 5 REGULATIONS: OMNIBUS REVISIONS

11

ACTION SCHEDULED

Presentation: *Steven Bruckman*
Executive Vice Chancellor and General Counsel

Issue

This item presents a package of minor revisions to title 5 of the California Code of Regulations. These changes involve a variety of subjects that have been combined into one package because none require major policy changes that would justify a separate discussion by the Board.

Background

As staff in the System Office and at the colleges attempt to apply title 5 regulations in their daily work, they sometimes become aware of errors or ambiguities in regulatory language that need to be resolved. Often the needed changes are relatively minor and do not involve policy changes or require immediate action. For example, language in a regulation may remain enforceable but be slightly inaccurate or misleading because of subsequent changes in other regulations or statutes. It also sometimes happens that a regulation works well in most instances but is found not to adequately address a very rare situation that was not anticipated when it was drafted.

It is usually not practical or desirable to develop a separate regulation package each time one of these small problems is noticed. Thus, staff in the Legal Affairs Division periodically gather together a number of such minor regulation changes and combine them into a title 5 review package. It has been a number of years since this was last done and such a clean-up effort is long overdue.

This package of proposed regulation changes was presented to the Board at its September 2005 meeting and a public hearing was held. Public comments were also accepted in writing. A few suggestions were made for minor changes and some revisions were made as a result. Certain changes that had been proposed to regulations on transfer centers and EOPS programs were removed from the package pending reports on these programs, which are scheduled to be presented to the Board at this meeting. In addition, the package now includes proposed revisions to section 58010 dealing with claiming apportionment for summer sessions and section 58146 relating to loss of apportionment due to extraordinary circumstances.

As a result of these changes, it was necessary to redistribute the package for further public comment and schedule another public hearing before the Board. That hearing occurred at the Board's November 2005 meeting. There was no testimony from the public at the November meeting and no written comments were received.

However, there was discussion by the Board at the November meeting and, based on that input, section 51102 has been revised as discussed below. There was also discussion about expanding the scope of section 58509 (which currently allows districts to accommodate students affected by wildfires) to also cover other types of natural disasters. This change has not been made because it would have been a substantive amendment that would have required renoticing the proposed regulation changes for a third time and delaying their adoption until the March 2006 meeting. Consideration will be given to making this change at a later date.

Analysis

The attached set of regulation changes includes comments designed to describe the nature and purpose of each proposed change. However, for convenience the following summary of the most significant changes is provided:

1. The minimum conditions regulations (commencing with § 51000) are amended to reflect the fact that the System Office is moving to increased reliance on local district audits and complaint procedures for monitoring compliance with these requirements. Certain provisions are amended to reduce requirements for filing various documents and reports with the System Office. The provisions describing enforcement procedures in the event of a minimum conditions violation are amended to clarify the flexibility the Chancellor and Board of Governors have in imposing remedies. In response to comments from the Board at the November 2005 meeting, language has been added to section 51102 to explain the limited circumstances under which categorical funding might be withheld or reduced as a result of a minimum conditions review. Other clarifying and technical changes are made.
2. Various regulations throughout title 5 are revised to protect districts and the System Office from potential litigation under Proposition 209 by eliminating language that could be construed to authorize preferential treatment on the basis of race, ethnicity, or gender.
3. Sections 53407 and 59011, which incorporate the disciplines list adopted by the statewide Academic Senate and the Community College Budget and Accounting Manual, respectively, into Board regulations are amended to refer to all future revisions of those documents once approved by the Board of Governors. This will avoid confusion that sometimes occurs when new versions of these documents are adopted by the Board but the regulations are not immediately updated to incorporate the revised documents into title 5.

Exhibit A-02

4. Revisions are proposed to sections 54010 and 54300 in response to the passage of Assembly Bill 1646 (Statutes of 2005, chapter 654) which, among other things, amended applicable statutes to permit electronic submission of admissions applications and residency questionnaires without the use of a digital signature technology approved by the Secretary of State.
5. Sections 54041 and 54050 of the residency regulations are revised to reflect changes in the Education Code provisions granting members of the armed forces and their dependents an exemption from paying nonresident tuition.
6. Section 54200, which provides a maintenance allowance for certain students residing in nondistrict territory, is updated to allow eligible students to attend more than one college, to provide a cost of living increase, and to ensure that eligibility is not solely based on enrollment in distance education classes.
7. The regulations related to student records (commencing with § 54600) are amended to conform to requirements of the Education Code and federal law.
8. Section 55231 is amended to eliminate the requirement that districts report to the System Office when they are offering courses outside their boundaries pursuant to an agreement with another community college district. Language is added to clarify under what circumstances a community college district may provide instruction outside its boundaries in response to a request from a high school district. In addition, a provision is added to make clear that the regulation does not prohibit study abroad programs.
9. Regulations related to preparation of educational master plans (§§ 55402 et seq.) are amended to eliminate the requirement for annual review by the System Office.
10. Sections 55600 et seq. are amended to clarify that they apply to contracts with private vocational schools in neighboring states as authorized by Education Code section 8092.5. Other technical changes are made to these regulations.
11. Sections 55720 and 55729 relating to flexible calendar are revised to allow for districts also wishing to adopt a compressed calendar. The requirement in section 55720 that employees work at least 175 days is being deleted to allow greater flexibility for individual employees to consider alternate work schedules. Removing this restriction will also make it easier for districts to adopt compressed calendars that permit more fully utilizing existing facilities. Districts will continue to be required to offer at least 175 days of instruction and faculty will still be required by statute to work a minimum number of days or hours each year to qualify for STRS coverage.
12. Sections 55761 and 58161 related to course repetition are amended to reflect the fact that the “FW” grading symbol is a substandard grade.

13. Certain regulations related to the associate degree (commencing with § 55802) are revised to delete provisions applicable only prior to July 1983 and to make other clarifying changes.
14. Certain regulations related to Disabled Students Programs and Services (commencing with § 56002) are amended to conform the definition of disability to provisions of the Fair Employment and Housing Act, which provides greater protection than federal law in this area. Outdated provisions are also removed and other technical changes made.
15. Section 58009, which sets forth the procedure for calculating apportionment for independent study courses, is clarified to address the possibility of conducting a lab course by this mechanism.
16. Section 58010 permits districts to elect in which fiscal year they choose to report attendance in summer sessions unless the Chancellor determines that the choice made by the district would adversely impact funding for other districts. The section is being amended to remove a "sunset" provision which would deprive the Chancellor of this authority to protect other districts.
17. The package of revisions originally noticed for public comment included a proposal to amend section 58051.6 related to inmate instruction in anticipation of the passage of SB 672 (Cox) to permit claiming apportionment for courses conducted at state correctional facilities and to permit all inmate education to be claimed at either the credit or the noncredit rate as appropriate. Because SB 672 was vetoed, the related amendments were removed and only nonsubstantive revisions are made to section 58051.6.
18. Section 58146 is amended to clarify when a district may be held harmless (and will not lose apportionment) if instruction is disrupted due to certain extraordinary circumstances.
19. Section 58509, which was enacted as an emergency regulation to accommodate students affected by wildfires in the Fall of 2003, is amended to make the regulation permanent and extend these protections to students affected by wildfires in the future.
20. Sections 54041 and 58620 are amended to clarify that military personnel and their dependents granted an exemption from nonresident tuition are to be considered California residents for purposes of determining eligibility for the Board of Governors fee waiver.
21. Section 58776 is amended to revise the formula for budget stability. This is necessary because the 2003 Budget Act limited budget stability to one year, and that limitation was later made permanent.
22. Technical and clarifying amendments are made to regulations related to resolution of audit citings. Section 59116 is amended to eliminate confusing and ambiguous language regarding resolution of minor or inadvertent errors revealed by an audit or review by the System Office. Section 59118 is amended to clarify the circumstances under which a

Exhibit A-04

district will be held harmless when action is not taken on a citing in an audit or review within five years.

23. Minor clarifying changes are made to certain regulations related to auxiliary organizations (commencing with § 59257). Section 59257 is amended to define the extent to which a district auxiliary organization may reimburse a district for work done by district employees through nonmonetary contributions. That section is also amended to clarify that a district may establish different financial standards which would be applicable to different types of auxiliary organizations.
24. The nondiscrimination regulations (commencing with § 59300) are revised to reflect changes in controlling statutes. Section 59339 is amended to eliminate appeals to the System Office in cases involving employment discrimination. Only the Department of Fair Employment and Housing can render binding decisions in employment discrimination cases. The current language of section 59339 is misleading to complainants who believe the System Office can afford them a remedy. Moreover, in most cases employees only appeal to the System Office in order to exhaust administrative remedies and move their cases to the judicial arena. In addition, current staffing levels do not permit review of these cases. Other clarifying changes are made to the nondiscrimination regulations.
25. Section 59402 is amended to provide that access to electronic data may be considered an “instructional material” which students can be required to provide or pay for, so long as the data can be stored so that the student will have comparable use of the material after the class is over.
26. Various regulations that are obsolete are repealed and outdated provisions of other regulations are removed.
27. Other minor technical or clarifying changes are made to various regulations.

Recommended Action

That the Board adopt the proposed regulation changes, as presented.

ATTACHMENT A

Title 5 Regulations: Omnibus Review

1. Section 51000 of subchapter 1 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 51000. Scope.

The provisions of this Chapter are adopted under the authority of Education Code Section 70901(b)(6) and comprise the rules and regulations fixing and affirming the minimum conditions, satisfaction of which entitles a district maintaining community colleges to receive state aid, including state general apportionment, for the support of its community colleges.

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

Comment: The revision confirms that all forms of state support are contingent upon compliance with the minimum conditions. Nonsubstantive drafting revisions are made.

2. Section 51022 of subchapter 1 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 51022. Instructional Programs.

(a) Within six months of the formation of a community college district, ~~the governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor,~~ adopt and carry out its policies for the establishment, modification, or discontinuance of courses or programs. Such policies shall incorporate statutory responsibilities regarding vocational or occupational training program review as specified in section 78016 of the Education Code.

(b) Within six months of the formation of a community college district, ~~the governing board of each community college district shall, no later than July 1, 1984, develop, file with the Chancellor,~~ adopt and carry out its policies and procedures to provide that its courses and programs are articulated with proximate four-year baccalaureate colleges and high schools.

Note: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections 70901, ~~78016, and 70902~~ and 78016, Education Code.

Comment: The references to policy development by 1984 are outdated, but the revisions confirm that any newly formed districts must meet the requirements within six months of formation. There is no need to file policies with the System Office, which can secure the policies when necessary.

3. Section 51023 of subchapter 1 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 51023. Faculty.

The governing board of a community college district shall:

(a) adopt a policy statement on academic freedom which shall be made available to faculty ~~and be filed with the Chancellor;~~

(b) adopt procedures which are consistent with the provisions of ~~Sections 53000~~ 53200 - 53206, regarding the role of academic senates and faculty councils ~~and are filed with the Chancellor;~~

(c) substantially comply with district adopted policy and procedures adopted pursuant to ~~Subsections~~ subdivisions (a) and (b).

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

Comment: Filing with the System Office is unnecessary; the Chancellor can easily obtain policy statements and procedures as needed. Title 5 section references are corrected. Nonsubstantive drafting revisions are made.

4. Section 51100 of subchapter 2 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 51100. Review of Colleges.

(a) ~~At least once each seven years, and at such other times as he or she deems necessary, the~~ The Chancellor shall annually review each a minimum of three community college districts to determine whether ~~it has~~ they have met the minimum conditions contained in ~~Subchapter 1~~ (commencing with ~~Section 51000~~) of ~~Chapter 2~~. The reviews shall be at random from among districts that have not recently been reviewed or based on complaints, audit findings, or other information concerning compliance. The Chancellor may conduct such additional compliance reviews as he or she deems appropriate.

(b) The Chancellor shall investigate complaints alleging that a district is failing to comply substantially with the minimum conditions contained in subchapter 1 and shall establish guidelines for accepting and handling such complaints.

(c) In the event that the Chancellor determines that a visit to the ~~college district~~ is necessary to investigate compliance, he or she shall make all reasonable efforts to inform the chief executive officer of the district at least one month in advance of such visit, and shall specify the particular minimum conditions ~~which that~~ will be investigated.

(d) The enforcement procedures and remedies set forth in this subchapter are in addition to any and all other enforcement mechanisms and remedies provided by law for violation of the provisions of this chapter.

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

Comment: The seven-year cycle of review has been modified because staffing resources have not been provided to the System Office to fulfill the obligation and because the current process has proved burdensome to districts. Alternative review processes have been established through audit procedures. The complaint process that has been in place for a number of years is defined. The addition of subdivision (d) confirms that the minimum conditions review processes do not replace other procedures. For example, the complaint process that is specific to the equal employment opportunity regulations remains in effect; there is no requirement to file an additional minimum conditions complaint when a violation of equal employment opportunity regulations is alleged. Nonsubstantive drafting revisions are made.

5. Section 51102 of subchapter 2 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 51102. Enforcement.

(a) If any review pursuant to ~~Section~~ Section 51100 discloses that a ~~college is~~ district may not be in compliance with the provisions of ~~Subchapter~~ Subchapter 1 (commencing with ~~Section~~ Section 51100) of ~~Chapter~~ Chapter 2, the Chancellor shall notify the chief executive officer of the district in writing, and shall request an official written response from the district by a date which the Chancellor shall specify.

(b) After receiving the district's written response, or after the time for response has lapsed, the Chancellor shall pursue one or more of the following courses of action:

(1) accept in whole or part the district's response regarding the alleged noncompliance;

(2) require the district to submit and adhere to a plan and timetable for achieving compliance as a condition for continued receipt of state aid;

(3) bar the district from eligibility for grants and/or contracts administered by the Chancellor's Office;

(4) withhold all or part of the allocation of funds which the district would otherwise receive from any categorical program administered by the Chancellor's Office; and/or

(5) withhold or reduce all or part of the district's state aid, including state general apportionment, and/or growth funding.

(c) ~~The amount of withholding remedy required by the Chancellor shall be related to the extent and gravity of noncompliance, and~~ As a general rule, categorical funds shall only be withheld or reduced where the noncompliance was directly related to the operation of that program or where other funds are not sufficient to cover the extent of the

withholding or reduction. Any withholding or reduction of funding shall require approval of the Board of Governors.

(e)(d) The Chancellor shall report to the Board of Governors on any actions taken pursuant to ~~Subsection-subdivision~~ (b) of this Section, provided that, in the event he or she determines to reduce or withhold all or a portion of a district's state aid, the Chancellor shall inform and obtain the approval of the Board prior to the reduction or withholding.

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

Comment: The revisions confirm the Board's latitude to reduce rather than withhold all of a district's state aid for minimum conditions violations. Language is added to clarify that the Chancellor has the flexibility to bar a district from receiving future grant or categorical funding as an alternative to withholding or recovering general apportionment. As a result of discussion at the November 2005 Board meeting, subdivision (c) was further amended to clarify the circumstances under which categorical funds may be withheld or reduced as a result of a minimum conditions violation. Nonsubstantive drafting revisions are also made.

6. Section 53407 of article 1 of subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53407. Disciplines Lists.

(a) The Board of Governors hereby adopts and incorporates by reference into this provision the two lists published by the Chancellor's Office, entitled "Disciplines Requiring the Master's Degree" and "Disciplines in which the Master's Degree is not Generally Expected or Available," as ~~revised September 1993~~ adopted by the Board at its September 2005 meeting, for the following purposes:

(1) to establish a working definition of the term "discipline" as used in Section 53410;

(2) to define which disciplines are "reasonably related" to one another, for purposes of Section 53410;

(3) to define disciplines in which the master's degree is not generally expected or available, as opposed to those for which the master's degree is required, for purposes of Section 53410.

(b) Revisions after September 2005 to the two lists referenced in subdivision (a) shall be considered incorporated by reference into this provision when they have been adopted by the Board.

Note: Authority cited: Sections 70901, 87356 and 87357, Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

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Comment: The addition of subdivision (b) allows Board-adopted disciplines lists to be incorporated as part of this regulation without repeatedly amending the regulation itself. Because the lists are only incorporated by reference if they are adopted by the Board, public notice and participation are ensured through the Board meeting procedures, and the adopted lists will always be available as a Board agenda item. Nonsubstantive drafting revisions are made.

7. Section 53410.1 of article 2 of subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53410.1. Professional License As Alternative Qualification.

For disciplines specified in this section, a bachelor's degree in the discipline of the assignment plus a professional license or certification may be substituted for the minimum qualifications specified in Section 53410. The license or certification so substituted must be valid in California. The following licenses and certifications are acceptable:

<i>Discipline</i>	<i>Licence or Certification</i>
Accounting	Certified Public Accountant
Counseling	Marriage, and Family, and Child Counselor <u>Therapist</u>
Engineering	Professional Engineer
Nutritional Science/Dietetics	Registered Dietitian

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

Comment: The name of the license that may substitute for the counseling minimum qualifications has changed.

8. Section 53413 of article 2 of subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53413. Minimum Qualifications for Apprenticeship Instructors.

~~(a) Until July 1, 1995, the minimum qualifications for service as a community college faculty member teaching credit or noncredit apprenticeship courses shall be satisfied by meeting both of the following requirements:~~

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

~~(2) Sixty clock hours or four semester units of instruction in materials, methods, and evaluation of instruction. This requirement may be satisfied concurrently during the first year of employment as an apprenticeship instructor.~~

~~(b) On or after July 1, 1995, t~~The minimum qualifications for service as a community college faculty member teaching credit apprenticeship courses shall be satisfied by meeting one of the following two requirements:

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

(2) Six years of occupational experience, a journeyman's certificate in the subject matter area to be taught, and completion of at least eighteen (18) semester units of degree applicable college level course work, in addition to apprenticeship credits.

~~(eb) On or after July 1, 1995, t~~The minimum qualifications for service as a community college faculty member teaching noncredit apprenticeship courses shall be either of the following:

(1) The minimum qualifications for credit apprenticeship instruction as set forth in this section, or

(2) A high school diploma; and six years of occupational experience in the occupation to be taught, including at least two years at the journeyman level; and sixty clock hours or four semester units in materials, methods, and evaluation of instruction. This last requirement may be satisfied concurrently during the first year of employment as an apprenticeship instructor.

Note: Authority cited: Sections 70901 and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 87356 and 87357, Education Code.

Comment: The references to qualifications that were in effect only until July 1, 1995, are removed.

9. Section 53501 of subchapter 5 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 53501. Purposes.

The purposes of the faculty internship program shall include, but not be limited to, the following:

(a) To enhance the recruitment of qualified persons pursuing the master's or doctoral degrees, or both, into faculty positions in community colleges in California, particularly for disciplines for which recruitment is difficult and for disciplines in which a shortage of qualified faculty is anticipated. In order to accomplish this purpose, the internship program shall serve to introduce graduate students, before they approach the end of their graduate studies, to the community college environment and student population.

(b) To enhance the recruitment of qualified persons pursuing an associate degree into faculty positions in community colleges in California, particularly for disciplines for which current industry experience is important and disciplines for which recruitment is difficult and in which a shortage of teachers is anticipated. In order to accomplish this purposes, the internship program shall serve to introduce industry practitioners to the community college environment and student populations while encouraging them to complete their associate degrees.

Exhibit A-12

(c) To enhance community college efforts toward building a diverse and ~~representative~~ faculty. In order to accomplish this purpose, the internship program shall place special emphasis on ~~locating and attracting~~ promoting inclusive efforts to locate and attract qualified graduate students who are members of ~~underrepresented~~ monitored groups as defined in section 53001(i).

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

Comment: The term "representative" is removed for vagueness and to avoid any suggestion of factors that are not job-related. The final sentence is updated to remove any implied preference and to coordinate with the revised equal employment opportunity regulations.

10. Section 54010 of subchapter 1 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54010. Residence Classification Procedures.

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

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

(c) Community college districts shall require applicants to supply information as specified in this subchapter and may require additional information as deemed necessary.

(d) The district shall weigh the information provided by the student and determine whether the student has clearly established that he or she has been a resident of California for one year prior to the residence determination date.

(e) Applicants shall certify their answers on residence questionnaires under oath or penalty of perjury.

(f) Pursuant to ~~Section~~ Section 54300, the district may authorize any information required by this section to be submitted electronically using ~~encrypted digital signatures~~ electronic signatures in lieu of manual signatures as specified in ~~Section~~ Section 54300.

Note: Authority cited: Sections 66700, 68044, 70901 and 70901.1, Education Code. Reference: Sections 68044, 68062 and 70901.1, Education Code.

Comment: As discussed below, the requirement for encrypted digital signatures in section 54300 is being revised, so the language of subdivision (f) of this section must be coordinated with the revisions to section 54300.

11. Section 54041 of subchapter 1 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54041. Military Dependent.

A dependent natural or adopted child, stepchild or spouse of a member of the armed forces of the United States claiming residence status pursuant to section 68074 of the Education Code shall provide a statement from the military person's commanding officer or personnel officer that the military person's duty station is in California on active duty as of the residence determination date; or that the military person is outside of California on active duty after having been transferred immediately and directly from a California duty station after the residence determination date; or that the military person has, after the residence determination date, retired as an active member of the armed forces of the United States. A statement that the student who qualifies for resident classification as a natural or adopted child or stepchild is a dependent of the military person for an exemption on federal taxes shall also be provided.

Note: Authority cited: Sections 66700, 68044 and 70901, Education Code. Reference: Sections 68044 and 68074, Education Code.

Comment: The change removes the implication that spouses must be dependents for tax purposes.

12. Section 54050 of subchapter 1 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54050. ~~Military Exceptions from the One-Year Waiting Period.~~

Those exceptions from payment of nonresident tuition provided by Education Code sections 68074 (military dependents) and 68075 (military members) apply ~~only during the first year of the student's current physical presence in California~~ for so long as the student qualifies under the terms of either section 68074 or section 68075. Resident classification for purposes of determining the amount of tuition and fees includes eligibility for Board of Governors fee waivers.

Note: Authority cited: Sections 66700 and 68044, Education Code. Reference: Sections 68044, 68074 and 68075, Education Code.

Comment: The Education Code exceptions were made permanent in 2001, so the limitation of one year is outdated. The System Office interpretation that students who are eligible for resident classification under these Education Code sections are eligible for fee waivers is incorporated.

13. Section 54200 of subchapter 3 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

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§ 54200. Certain Students' Residences More than 60 Miles from Nearest Attendance Center.

(a) Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service within the armed forces of the United States, who resides in this state and more than 60 miles from the nearest community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

(b) The provisions of this Section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and community college attendance center.

(c) If the student resides within territory not included within any district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the student's home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars (\$4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled and attends full-time in-credit classes full time in a community college under this Section. The Chancellor may annually increase this amount by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Districts shall receive reimbursement from the Chancellor's Office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided by law.

(d) Notwithstanding any provision to the contrary, a student is eligible for the maintenance allowance authorized by this section for the period of time that the student is enrolled and attends credit courses full time at a single community college district or combines credit classes taken at no more than two community college districts to constitute full time enrollment in credit classes.

(e) If a student combines enrollment at two districts to satisfy the full time enrollment and attendance requirement of this section, the claim for reimbursement and payment to the student as noted in (c) shall be made by the district where the student is enrolled for the higher number of credit units. If the student is enrolled for an equal number of credit units at each district, the claim for reimbursement and payment to the student shall be made by the district that is located closer to the student's home address. The district that submits the claim for reimbursement and makes payment to the student is responsible for verifying all the claimed credit units that serve as the basis for payment.

(f) Credit classes offered through distance education that meet the requirements of sections 55205 et seq. may be included in establishing full time enrollment so long as a

portion of the credit units taken at each community college district to satisfy the requirements of this section are not taken through distance education.

(g) No later than 60 days after the close of each fiscal year the Chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by ~~community colleges-districts~~ exceed total funds raised by ~~nondistrict territories~~ appropriated in any fiscal year for that this purpose prior to July 1, 1978, the Chancellor shall prorate the allowances made under this ~~S~~section. No later than 90 days after the close of each fiscal year, the community college districts shall pay eligible students, as verified by the appropriate county superintendent of schools, at the rate prescribed by the Chancellor ~~and verification of the claims by the appropriate county superintendent of schools.~~

(h) The Chancellor shall prescribe procedures for the submission of claims by districts.

(i) For the purpose of this ~~S~~section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorably discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the ~~“Universal Military Training and Selective Service Act,”~~ and

(1) satisfactorily completes his or her period of training and service under that Act and is issued a certificate to that effect pursuant to that Act, or

(2) having served honorably on active duty was transferred to a reserve component of the armed forces of the United States pursuant to that Act, or

(3) was otherwise released pursuant to that Act under honorable conditions.

(j) For the purposes of this ~~S~~section, the term “armed forces of the United States” shall include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretaries of the Army, Navy and Air Force, and all components of the Coast Guard.

(k) Students residing in a ~~nondistrict territory~~ that has been annexed to a community college district and residing more than 60 miles from the nearest community college shall be provided a maintenance allowance as prescribed by this ~~S~~section for up to four years from the date of annexation.

Note: Authority cited: Sections 66700; and 70901 ~~and~~ 84750, Education Code. Reference: Section 70901, Education Code.

Comment: The section is updated to allow eligible students to attend more than one college, to provide a cost of living increase, and to ensure that eligibility is not solely based on enrollment in distance education classes. The cost of the program is not increased by the changes because the funding level for the program is established annually. If the program is not fully funded, the existing funds are apportioned among participants. Legal citations are updated and nonsubstantive drafting revisions are made.

14. Section 54220 of subchapter 4 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54220. Student Equity Plans.

(a) In order to promote student success for all students, regardless of race, gender, age, disability, or economic circumstances, the governing board of each community college district shall ~~adopt, by July 1, 1993,~~ maintain a student equity plan which includes for each college in the district:

(1) Campus-based research as to the extent of student equity in the five areas described in paragraph (2) and the determination of what activities are most likely to be effective;

(2) Goals for access, retention, degree and certificate completion, ESL and basic skills completion, and transfer; for the overall student population, and for each population group of students, as appropriate. Where significant underrepresentation is found to exist in accordance with standards adopted by the Board of Governors, the plan shall include race-neutral and/or gender-neutral measures for addressing the disparities in those areas, and, when legally appropriate, goals for addressing a disparity in representation of students with disabilities, and where required by federal law, race-conscious and/or gender-conscious measures for addressing the a race or gender disparity;

(3) Implementation activities designed to attain the goals, including a means of coordinating existing student equity related programs;

(4) Sources of funds for the activities in the plan;

(5) Schedule and process for evaluation; and

(6) An executive summary that includes, at a minimum, the groups for whom goals have been set, the goals, the initiatives that the college or district will undertake to achieve these goals, the resources that have been budgeted for that purpose, and the district official to contact for further information.

(b) These plans should be developed with the active involvement of all groups on campus as required by law, and with the involvement of appropriate people from the community.

(c) The Board-adopted plan shall be submitted to the Office of the Chancellor, which shall publish all executive summaries, sending copies to every college and district, the chair of each consultation group that so requests, and such additional individuals and organizations as deemed appropriate.

(d) For the purposes of this section, "each population group of students" means American Indians or Alaskan natives, Asians or Pacific Islanders, Blacks, Hispanics, Whites, men, women, and persons with disabilities. A person shall be included in the group with which he or she identifies as his or her group.

Note: Authority cited: Section 70901, Education Code. Reference: Sections 66010.2, 66010.7, 66030 and 70901, Education Code.

Comment: The revisions confirm that race-conscious and gender-conscious efforts must conform to the requirements of Proposition 209. Goals are acceptable for addressing disparities in representation for students with disabilities.

15. Section 54300 of subchapter 4.5 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54300. Electronic Applications and ~~Digital~~ Electronic Signatures.

(a) Community college districts may authorize the electronic submission of any admission form or student form or document, and the use of digital signatures

(b) Electronic signatures in lieu of manual signatures may be used on any documents requiring a signature, providing the electronic signature meets the standards for electronic signatures in electronic student loan transactions adopted by the U.S. Department of Education to implement the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §§ 7001 et seq.).

(c) Applications for admission and Residency questionnaires submitted electronically must include a digital signature. Where a digital signature is required, it shall use the technology, criteria, and procedures for digital signatures approved by the Secretary of State, and contained in Title 2, California Code of Regulations, Section 22000 et. seq. are valid only if they include electronic signatures that satisfy the requirements of subdivision (b).

(d) Prior to the electronic submission of any information, districts will inform applicants and students of the relative security of the information they submit electronically.

Note: Authority cited: Sections 66700, 70901 and 70901.1, Education Code. Reference: Section 70901.1, Education Code; and ~~Section 16.5, Government Code~~ 15 USC sections 7001 et seq.

Comment: The changes allow for electronic signatures if the federal standards adopted for electronic signatures in the federal student loan programs are observed.

16. Section 54600 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54600. Purpose.

(a) This subchapter is adopted pursuant to and for implementation of Chapter 1.5 (commencing with Section 76200), Part 47 of Division 7 of the Education Code regarding Student Records. The provisions of this subchapter should be read and interpreted in conjunction with the provisions of Chapter 1.5.

(b) Any conflicts between the provisions of this subchapter and federal law shall be interpreted to ensure the continuance of federal education funds to community college districts. Where federal law permits the disclosure of information concerning students,

each community college district may determine whether to provide for such disclosure in that district.

Note: Authority cited: Sections 76220, 76225 and 76246, Education Code. Reference: Chapter 1.5 (commencing with §section 76200), Part 47, Division 7, Education Code; ~~and~~ 20 USC section 1232(g); and 34 CFR, Part 99.

Comment: Currently, districts must consult federal law, the Education Code, and title 5 to be sure they are complying with student records requirements. There is no need for regulatory provisions to duplicate Education Code or federal language. Districts need to stay current with federal law (Family Educational Rights and Privacy Act - FERPA) because compliance is tied to receipt of federal funding. Federal law has been changing over the past years, so it is important to confirm that this subchapter is to be interpreted in a manner consistent with federal law so as to ensure continued federal funding. Should federal law permit – rather than require - disclosure of student records, decisions concerning such disclosures should be made by each district and on a district-wide basis. Nonsubstantive drafting revisions are made and a reference to federal regulations is added because those federal regulations include a great deal of information on student records.

17. Section 54604 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54604. Policy.

Community College districts may establish and maintain only such information on students relevant to admission, registration, academic history, career, student benefits or services, extracurricular activities, counseling and guidance, discipline or matters relating to student conduct, and shall establish and maintain such information required by law.

Note: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76210, Education Code; ~~and~~ 20 USC section 1232(g); and 34 CFR, Part 99.

Comment: Nonsubstantive revisions are made.

18. Section 54606 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is repealed:

§ 54606. Definitions.

~~(a) “Student” as used in this Chapter means a currently enrolled or formerly enrolled student.~~

~~(b) “Access” means a personal inspection and review of a record, an accurate copy of a record, an oral description or communication of a record or an accurate copy of a~~

record, or a request to release a copy of any record. The student shall be permitted to select the means of access.

~~(c) "Student Record" means any item of information directly related to an identifiable student maintained by a Community College or required to be maintained by an employee in the performance of the employee's duties, whether recorded by handwriting, print, tapes, film, microfilm or other means, except:~~

~~(1) Information provided by a student's parents relating to applications for financial aid or scholarships;~~

~~(2) Information related to a student compiled by a Community College officer or employee:~~

~~(A) appropriate for such officer or employee's performance of his or her responsibility; and~~

~~(B) which remains in the sole possession of the maker thereof; and~~

~~(C) is not accessible or revealed to any other person except a substitute. For the purposes of this subdivision, "substitute" shall mean a person who performs on a temporary basis the duties of the individual who made the notes and does not refer to a person who permanently succeeds the maker of the notes in his or her position.~~

~~(3) Information related to a student created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional:~~

~~(A) acting or assisting in his professional or paraprofessional capacity; and~~

~~(B) the record is created, maintained or used in connection with the provision of treatment to the student; and~~

~~(C) the record is not available to anyone other than persons providing such treatment; provided, however, that such a record may be personally reviewed by a physician or other appropriate professional of the student's choice.~~

~~(4) Information maintained by a Community College law enforcement unit:~~

~~(A) necessary and appropriate to enable such law enforcement unit to carry out its duties and responsibilities as required by law or as may be assigned by the district~~

~~(B) unit personnel do not have access to other student records; and~~

~~(C) such information is kept apart from other student records; and~~

~~(D) maintained solely for law enforcement purposes; and~~

~~(E) is available only to other law enforcement officials of the same jurisdiction.~~

~~(5) Confidential letters and statements of recommendations maintained by a Community College on or before January 1, 1975, provided that such letters or statements are not used for purposes other than those for which they were specifically intended.~~

~~(6) Information maintained in the normal course of business pertaining to persons who are employed by a community college, provided that such information relates exclusively to such person in that person's capacity as an employee and is not available for use for any other purpose.~~

~~(7) Information related to a student compiled by a community college officer or employee which remains in the sole possession of the maker and is not available to any other person except a substitute who performs the duties of the individual who made the notes on a temporary basis.~~

~~(d) "Directory Information" means one or more of the following items: student's name, address, telephone number, date and place of birth, major field of study, class~~

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~~schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student, and any other information authorized in writing by the student.~~

~~(e) "Financial Aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at a community college.~~

~~Note: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76210, Education Code; 20 USC 1232(g); and 45 CFR 99.3.~~

Comment: Most of the regulation definitions duplicate definitions in Education Code section 76210. The definition of "financial aid" is not in the Education Code, but it appears at 34 CFR section 99.31; "student" is defined at 34 CFR section 99.3. The right of students to select the type of access under (c) is added to section 54610.

19. Section 54608 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54608. Retention and Destruction of Student Records.

The retention and destruction of student records, where not otherwise specifically provided for in this Ssubchapter, shall be in accordance with ~~regulations adopted by the Board for the retention and destruction of records generally. Such regulations, adopted pursuant to Education Code Sections 70901 and 76220 appear in Division 6, Chapter 10, Ssubchapter 2.5 (commencing with Ssection 59020) of chapter 10.~~

Note: Authority cited: Sections 70901, 76220 and 76246, Education Code. Reference: Section 72603, Education Code; 20 USC section 1232(g); and 45 CFR section 99.3.

Comment: Nonsubstantive revisions are made.

20. Section 54610 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54610. Student Access.

Community college districts shall provide access to student records pursuant to Education Code Ssections 76210(c) and 76230, provided that if any material or document in the student record includes information on more than one student, the rights provided in Ssection 76230 shall only extend to such information as pertains to the student. Each student shall be permitted to select the means of access to his or her own student records.

Note: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76230, Education Code; and 20 USC section 1232(g); and 34 CFR, Part 99.

Comment: The added Education Code reference is to the definition of "access." The authority for students to select their own means of access is added here from section 54606.

21. Section 54612 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54612. Waiver.

A student may waive his or her right to ~~of~~ access to student records concerning recommendations as provided in Education Code ~~§~~section 76231. Such waivers shall be in writing and signed by the student.

Note: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76231, Education Code; 20 USC section 1232(g); and 45 CFR ~~99.6~~section 99.12.

Comment: The referenced Education Code allows waiver of access to recommendations only, so this provision is coordinated.

22. Section 54626 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54626. Directory Information.

(a) Community college districts shall adopt a policy identifying any of the following categories of directory information which may be released: ~~student's name, address, telephone number, date and place of birth, major field of study, class schedule, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous public or private school attended by the student under Education Code section 76210 or allowed under federal law at 34 CFR section 99.3.~~

(b) Directory information, as established by the local governing board, may be released ~~as to any student or former student currently attending the community college, provided that public notice is given at least annually of the categories of information which the district plans to release and of the recipients in accordance with Education Code section 76240.~~ Such notice shall also specify the period of time within which the student must inform the district in writing that such personally identifiable information is not to be designated as directory information with respect to that student. ~~No directory information shall be released regarding any student or former student when the student or former student has notified the school in writing pursuant to procedures established by the district that such information shall not be released.~~

(c) ~~Other information may be added to the categories set forth in subsection~~

~~(a) of this section, provided that release of such information shall be authorized in writing by the student.~~

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~~(d) Any district may, in its discretion, limit or deny the release of specific categories of directory information to any public or private nonprofit organization based upon a determination of the best interests of students. The names and addresses of students may be provided to a private school or college operating under the provisions of Division 10 of the Education Code, or its authorized representative, provided, however, that no such private school or college shall use such information for other than purposes directly related to the academic or professional goals of the institution.~~

Note: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76240 and 76242, Education Code; 20 USC section 1232(g); and 45 CFR 99.40, Part 99.

Comments: The definition of "directory information" in subdivision (a) duplicates Education Code section 76210(b) – except that the inclusion of "class schedule" conflicts with the Education Code. The release of directory information duplicates Education Code section 76240 except as to details that are retained here. Subdivision (c) misstates federal regulations that preclude categories of directory information that would generally be considered harmful or an invasion of privacy. (34 CFR § 99.3.) Release of information to private schools and colleges is already addressed in Education Code section 76240.

23. Section 54630 of subchapter 6 of chapter 5 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 54630. Challenging Content of Records.

Any student may challenge the content of his or her student records pursuant to Education Code §section 76232. The decision of the chief administrative officer and governing board must be in writing.

Note: Authority cited: Sections 76220 and 76246, Education Code. Reference: Section 76232, Education Code; 20 USC section 1232(g); and 45 CFR sections 99.20-99.22.

Comment: A nonsubstantive revision is made.

24. Section 55001 of article 1 of subchapter 1 of chapter 6 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 55001. Community College Educational Program.~~

- ~~(a) The instructional services of community colleges include:~~
- ~~(1) liberal arts and sciences education:~~
 - ~~(A) baccalaureate-oriented/transfer programs and courses~~
 - ~~(B) associate degree programs and courses~~
 - ~~(C) developmental programs and courses~~
 - ~~—1. compensatory programs and courses~~

- ~~—2. adult elementary and secondary basic skills programs and courses~~
- ~~(D) community education programs and courses~~
- ~~—1. personal development and survival courses~~
- ~~—2. parenting and family support courses~~
- ~~—3. community and civic development courses~~
- ~~—4. general and cultural courses~~
- ~~(2) occupational education:~~
 - ~~(A) vocational/technical transfer programs and courses~~
 - ~~(B) vocational/technical associate degree and certificate programs and courses~~
 - ~~(C) continuing education vocational/technical certificates, programs and courses~~
- ~~(b) The community services(Non FTES generating) of community colleges include:~~
 - ~~(1) community services classes:~~
 - ~~(A) a vocational classes~~
 - ~~(B) recreational classes~~
 - ~~(C) seminars, lecture series, forum series, workshops, and conferences~~
 - ~~(D) professional and occupational in-service classes~~
 - ~~(2) community services activities:~~
 - ~~(A) Civic Center Act activities~~
 - ~~(B) cultural activities~~
 - ~~(C) community development activities~~
 - ~~(D) recreational activities~~
- ~~(c) All districts shall report the classification of all courses, classes, and activities offered in accordance with the system contained in Subsections(a) and(b) and the standards in Section 55002 by transmitting the following information to the Chancellor's Office:~~
 - ~~(1) the unique static course identifier and the course title for all credit and noncredit courses;~~
 - ~~(2) the classification of each credit and noncredit course in accordance with its primary objective, consistent with guidelines published by the Chancellor;~~
 - ~~(3) whether the course is offered as credit or noncredit;~~
 - ~~(4) whether the course transfers to the California State University or the University of California or both;~~
 - ~~(5) the number of community services classes in each category, and the number of participants; and~~
 - ~~(6) the number of community services activities in each category and the number of participants.~~
- ~~(d) For courses, classes, and activities which are added after June 30, 1982, the district shall report the classification of all courses, classes and activities in the manner provided by Subsection(c). The Chancellor shall review and comment upon, as necessary, the classification of such courses, classes, and activities.~~

Note: Authority cited: Sections 66700, 70901, and 78401, Education Code.
Reference: Sections 66701, 70901, 70902, 78300, and 78401, Education Code.

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Comment: The section has no continued use. It reflects an effort to gather information for a report that was issued in 1982.

25. Section 55002 of article 1 of subchapter 1 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55002. Standards and Criteria for Courses and Classes.

(a) Associate Degree Credit Course. An associate degree credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of ~~Section~~ 55805.5, and which has been recommended by the college and/or district curriculum committee and approved by the district governing board as a collegiate course meeting the needs of the students eligible for admission.

(1) Curriculum Committee. The college and/or district curriculum committee recommending the course shall be established by the mutual agreement of the college and/or district administration and the academic senate. The committee shall be either a committee of the academic senate or a committee that includes faculty and is otherwise comprised in a way that is mutually agreeable to the college and/or district administration and the academic senate.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course for associate degree credit if it meets the following standards:

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 ~~of this Division~~. The grade is based on demonstrated proficiency in subject matter and the ability to demonstrate that proficiency, at least in part, by means of essays, or, in courses where the curriculum committee deems them to be appropriate, by problem solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course also requires a minimum of three hours of work per week, including class time for each unit of credit, prorated for short-term, laboratory and activity courses.

(C) Intensity. The course treats subject matter with a scope and intensity that requires students to study independently outside of class time.

(D) Prerequisites and Corequisites. When the college and/or district curriculum committee determines, based on a review of the course outline of record, that a student would be highly unlikely to receive a satisfactory grade unless the student has knowledge or skills not taught in the course, then the course shall require prerequisites or corequisites that are established, reviewed, and applied in accordance with the requirements of ~~Article~~ 2.5 (commencing with ~~Section~~ 55200) of this ~~Subchapter~~.

(E) Basic Skills Requirements. If success in the course is dependent upon communication or computation skills, then the course shall require, consistent with the provisions of ~~Article~~ 2.5 (commencing with ~~Section~~ 55200) of this ~~Subchapter~~, as

prerequisites or corequisites eligibility for enrollment in associate degree credit courses in English and/or mathematics, respectively.

(F) Difficulty. The course work calls for critical thinking and the understanding and application of concepts determined by the curriculum committee to be at college level.

(G) Level. The course requires learning skills and a vocabulary that the curriculum committee deems appropriate for a college course.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students.

(4) Conduct of Course. Each section of the course is to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of Chapter 2 (~~commencing with Section 51000~~), sections 51002, 55761-55763 and 58161 ~~of this Division.~~

(b) Nondegree Credit Course. A credit course designated by the governing board as not applicable to the associate degree is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and is approved by the district governing board and falls within one of the following categories ~~described in Subdivision (1) of this Subsection.~~

(1) Types of Courses. Nondegree applicable credit courses are:

(A) precollegiate basic skills courses as defined in Section 55502(d) ~~of this Division;~~

(B) courses designed to enable students to succeed in college-level work (including, but not limited to, college orientation and guidance courses, and discipline-specific preparatory courses such as biology, history, or electronics) that integrate basic skills instruction throughout and assign grades partly upon the demonstrated mastery of those skills;

(C) precollegiate occupational preparation courses designed to provide foundation skills for students preparing for entry into college-level occupational courses or programs;

(D) essential occupational instruction for which meeting the standards of Section 55002(a) is neither necessary nor required.

(2) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course on the basis of the standards which follow. In order to be eligible for state apportionment, such courses must be approved (as courses not part of programs) by the Chancellor's Office as provided by Section 55100 ~~of this Division.~~

(A) Grading Policy. The course provides for measurement of student performance in terms of the stated course objectives and culminates in a formal, permanently recorded grade based upon uniform standards in accordance with section 55758 ~~of this Division.~~ The grade is based on demonstrated proficiency in the subject matter and the ability to

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demonstrate that proficiency, at least in part, by means of written expression that may include essays, or, in courses where the curriculum committee deems them to be appropriate, by problem-solving exercises or skills demonstrations by students.

(B) Units. The course grants units of credit based upon a relationship specified by the governing board between the number of units assigned to the course and the number of lecture and/or laboratory hours or performance criteria specified in the course outline. The course requires a minimum of three hours of student work per week, per unit, including class time and/or demonstrated competency, for each unit of credit, prorated for short-term, laboratory, and activity courses.

(C) Intensity. The course provides instruction in critical thinking and generally treats subject matter with a scope and intensity that prepares students to study independently outside of class time and includes reading and writing assignments and homework. In particular, the assignments will be sufficiently rigorous that students completing each such course successfully will have acquired the skills necessary to successfully complete college-level work upon completion of the required sequence of such courses.

(D) Prerequisites and corequisites. When the college and/or district curriculum committee deems appropriate, the course may require prerequisites or corequisites for the course that are established, reviewed, and applied in accordance with Article 2.5 (commencing with Section 55200) of this Subchapter.

(3) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the unit value, scope, objectives, and content in terms of a specific body of knowledge. The course outline shall also specify types or provide examples of required reading and writing assignments, other outside-of-class assignments, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met by students. Taken together, these course specifications shall be such as to typically enable any student who successfully completes all of the assigned work prescribed in the outline of record to successfully meet the course objectives.

(4) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with a set of objectives and with other specifications defined in the course outline of record.

(5) Repetition. Repeated enrollment is allowed only in accordance with provisions of ~~Division 2 (commencing with Section 51000)~~, Sections 51002, 55761-55763 and 58161 of this Division.

(c) Noncredit Course. A noncredit course is a course which, at a minimum, is recommended by the college and/or district curriculum committee (the committee described and established under Subdivision (a)(1) of this Section) and approved by the district governing board as a course meeting the needs of enrolled students.

(1) Standards for Approval. The college and/or district curriculum committee shall recommend approval of the course if the course treats subject matter and uses resource materials, teaching methods, and standards of attendance and achievement that the committee deems appropriate for the enrolled students. In order to be eligible for state apportionment, such courses are limited to the categories of instruction listed in

Education Code ~~Section 84711-84757~~ and must be approved by the Chancellor's Office as noted in Title 5, pursuant to ~~Section 55150~~.

(2) Course Outline of Record. The course is described in a course outline of record that shall be maintained in the official college files and made available to each instructor. The course outline of record shall specify the scope, objectives, contents, instructional methodology, and methods of evaluation for determining whether the stated objectives have been met.

(3) Conduct of Course. All sections of the course are to be taught by a qualified instructor in accordance with the set of objectives and other specifications defined in the course outline of record.

(d) Community Services Class. A community services class is a class that meets the following minimum requirements:

(1) is approved by the local district governing board;

(2) is designed for the physical, mental, moral, economic, or civic development of persons enrolled therein;

(3) provides subject matter content, resource materials, and teaching methods which the district governing board deems appropriate for the enrolled students;

(4) is conducted in accordance with a predetermined strategy or plan;

(5) is open to all members of the community; and

(6) may not be claimed for apportionment purposes.

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

Comment: The reference to all of the minimum conditions section in connection with course repetition is too broad because they do not deal with course repetition. The reference to repealed Education Code section 84711 is updated. Nonsubstantive drafting revisions are made.

26. Section 55231 of subchapter 2 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55231. Establishment of ~~Classes~~Courses Outside of District.

The governing board of a community college district may establish courses outside the district primarily for students who are nonresidents of the district, providing one of the following conditions are~~is~~ fulfilled:

(a) The governing board of a high school district ~~or another community college district, in territory that is not included in any community college district~~ requests that community college ~~classes~~courses be offered in the high school district ~~or community college district~~.

(b) ~~The community college district annually reports to the Board of Governors, in advance of their offering, on the classes to be established or continued pursuant to this authorization. The governing board of a high school district requests that community~~

college courses be offered in the high school district in accordance with other applicable provisions of law and either:

(1) the community college district where the high school district is located chooses not to offer such courses; or

(2) the courses will be offered only to pupils of the high school and will not be claimed for apportionment by the community college district.

(c) Another community college district requests that community college courses be offered in its territory.

Nothing in this section or any other provision of this subchapter shall be construed to prohibit districts from establishing study abroad programs as described in Education Code section 66015.7 for students who are district residents or students who are not residents of the district.

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

Comment: Section 55231 is amended to eliminate the requirement that districts report to the System Office when they are offering courses outside their boundaries pursuant to an agreement with another district. Clarifying language is added to describe the ability to offer classes in territory that is not a part of a community college district and where community college districts do not wish to offer classes that high school districts request. The additional language confirms that study abroad programs are not prohibited by the limitations on programs and classes outside district boundaries within California.

27. Section 55402 of subchapter 5 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55402. Educational Master Plans.

~~On or before January 1, 1972, t~~The governing board of each ~~C~~community ~~C~~college district shall submit to the Chancellor an educational master plan for each ~~C~~community ~~C~~college which it maintains and for the district as a whole. Each plan shall be modified and brought up to date annually and shall be submitted to the Chancellor ~~on or before November 1 of each year thereafter upon his or her request.~~

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

Comment: The 1972 date is no longer needed. The annual submission to the Chancellor is unnecessary; the Chancellor can secure copies of the plans as needed. Authority and reference citations are added.

28. Section 55405 of subchapter 5 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55405. Review and Approval.

The Chancellor shall review each master plan as he or she considers necessary. ~~On or before February 14~~ Following the submission of each plan requested by the Chancellor, the Chancellor shall send a copy of the plan approval or statement of deficiencies to the superintendent chief executive officer of each the district.

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

Comment: The assumption that approval is automatic is replaced with a requirement for the Chancellor to identify any deficiencies to submitted plans. Numerous districts do not use the term "superintendent," so the term "chief executive officer" is substituted. Authority and reference citations are added.

29. Chapter 6 of division 6 of title 6 is amended to add:

Add the heading: **Subchapter 5.5. Excursions and Field Trips** immediately before **section 55450**.

Comment: The sections regarding excursions and field trips (sections 55450 and 55451) are not part of the educational master plans subchapter; they need their own subchapter.

30. Section 55534 of article 4 of subchapter 6 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55534. Violations, Waivers and Appeals.

(a) Each community college district shall establish written procedures by which students may challenge any alleged violation of the provisions of this Ssubchapter. Districts shall investigate and attempt to resolve any such complaints in a timely manner. Such complaint procedures may be consolidated with existing student grievance procedures by action of the governing board. Records of all such complaints shall be retained for at least three years after the complaint has been resolved and shall be subject to review by the Chancellor as part of the statewide evaluation required under Ssection 55512(c).

(b) When a challenge contains an allegation that a community college district has violated the provisions of Ssection 55521(a)(6), the district shall, upon completion of the challenge procedure established pursuant to this Ssection, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to Ssubchapter 5 (commencing with Ssection 59300) of Cchapter 10 of this Division. Completion of the

challenge procedure shall be deemed to ~~satisfy the requirement of Section 59328(b) that the district and the student attempt~~ be an effort at informal resolution of the complaint under section 59327.

Note: Authority cited: Section 11138, Government Code; Sections 66700 and 70901, Education Code. Reference: Sections 11135-11139.5, Government Code; Sections 78211 and 78213, Education Code.

Comment: The informal resolution provision of the discrimination regulations is now section 59327, and informal resolution efforts are no longer required.

31. Section 55600 of article 1 of subchapter 7 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55600. Definitions.

For the purposes of this ~~article-subchapter~~ the following definitions apply:

(a) “Vocational education contract” means a written agreement between any community college district and a contractor which meets standards prescribed herein to provide vocational instruction to students enrolled in community colleges. Such agreements shall also be required to comply with the provisions of article 5 (commencing with section 8090) of chapter 1, part 6 of the Education Code.

(b) “The California State Plan for Vocational Education” means an official agreement between the United States Commissioner of Education and the California State Board of Education which provides standards, policies, and procedures that shall apply to the operation of various phases of vocational education to qualify for financial support from the Education Amendments of 1976 (Public Law 94-482 and 95-40), part A, Vocational Education, or any subsequent federal legislation.

(c) “Contractor” as used in section 55602 means any private postsecondary school authorized or approved pursuant to the provisions of ~~chapter 3-7 of part 59 of division 10 of the Education Code (commencing with section 9430094700)~~, and which has been in operation not less than two (2) full calendar years prior to the effective date of the contract, to provide vocational skill training authorized by the Education Code and this Code subchapter.

(d) “Eligible costs” means all direct and indirect related instructional costs but does not include expenditures for capital outlay (6000 category in the California Community Colleges Budget and Accounting Manual).

(e) “Public or private postsecondary educational institution in a neighboring state that borders on the district boundary” for purposes of Education Code section 8092.5 means a public or private institution which:

(1) is located in a neighboring state that borders on the district boundary; and

(2) is a contractor under subdivision (c); or

(3) a private postsecondary school that meets standards established by the Chancellor.

(f) “Qualified faculty of the district” for purposes of section 55630(e) may include persons who have entered into contracts with the district pursuant to section 58058(b).

Note: Authority cited: Sections 8092, 66700, ~~and 70901~~ and 71024, Education Code. Reference: Chapter 1, ~~Article 5~~ (commencing with ~~Section 8090~~), ~~Division 1~~, and section 70901, Education Code.

Comment: The approval requirements for private postsecondary now appear at sections 94700 et seq. of the Education Code. Although Education Code section 8092.5 authorizes contracting with private postsecondary institutions in neighboring states, the state agency responsible for reviewing and approving private postsecondary schools will not review such schools. Accordingly, standards for such schools must be established and enforced through means the Chancellor determines. The verification that contractor employees may be considered qualified faculty if the conditions of section 58058(b) are met conforms the regulation to current practice.

32. Section 55602 of article 1 of subchapter 7 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55602. Authority to Contract.

(a) ~~Any community college district or districts may contract with a private post postsecondary school authorized or approved pursuant to the provisions of chapter 3-7 of part 59 of division 10 of the Education Code (commencing with section 9430094700) of part 59 of the Education Code or described in Education Code section 8092.5 and which has been in operation not less than two full calendar years prior to the effective date of such contract to provide vocational skill training authorized by the Education Code and this subchapter. Any community college district may contract with an activity center, work activity center, or sheltered work-workshop to provide vocational skill training authorized by the Education Code in any adult education program for substantially handicapped persons operated pursuant to subdivision (e) of section 41976(a)(5) of the Education Code.~~

(b) All contracts between a community college district and a private postsecondary school entered into pursuant to this section, or an activity center, work center, or sheltered workshop shall do all of the following:

(1) Be approved by the Chancellor.

(2) Provide that the amount contracted for per student shall not exceed the total direct and indirect costs to provide the same training in the community colleges or the tuition the private postsecondary school charges its private students, whichever is lower.

(3) Provide that the community college students receiving training in a private postsecondary school, or an activity center, work activity center, or sheltered workshop pursuant to that contract may not be charged additional tuition for any training included in the contract. The attendance of those students pursuant to a contract authorized by this section shall be credited to the community college district for the purposes of apportionments from the State School Fund.

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(4) Provide that all programs, courses, and classes of instruction shall meet the standards set forth in the California State Plan for Vocational Education, or is a course of study for adult schools approved by the Department of Education under section 51056 of the Education Code.

(c) Meet the standards described in section 55620.

(d) Include the terms and conditions described in section 55630.

(e) The students who attend a private postsecondary school or an activity center, work activity center or sheltered workshop pursuant to a contract under this section shall be enrollees of the community college and the vocational instruction provided pursuant to that contract shall be under the exclusive control and management of the governing body of the contracting community college district. The Chancellor may audit the accounts of both the district and the private party involved in these contracts to the extent necessary to assure the integrity of the public funds involved.

Note: Authority cited: Sections 8092, 66700, and 70901 and 71024, Education Code. Reference: Chapter 1, article 5 (commencing with Section 8090), part 6, division 1, Section 70901 and chapter 7 (commencing with section 94700) of part 59, division 10, Education Code.

Comment: The revision ensures that contracts with private postsecondary schools in neighboring states are subject to requirements similar to those affecting in-state private postsecondary schools. The basic authority to contract should also reference contracting standards and contract provisions.

33. Section 55630 of article 3 of subchapter 7 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55630. Terms and Conditions.

Each contract shall expressly include but not be limited to, the following provisions:

(a) The governing board of the community college district has determined, by resolution, the appropriateness of offering the program through a contract with a contractor pursuant to Education Code section 78015.

(b) Methods for identifying eligible costs and payment procedures for compliance with section 55602 subdivisions 2(b)(2) and 3(b)(3).

(c) Procedures, terms and conditions relating to (1) enrollment period; (2) transfer of students between the community college district and contractor; (3) number of class hours sufficient to meet the stated performance objectives; (4) supervision and evaluation of students; and (5) withdrawal of students prior to completion of a course or program.

(d) The contractor and the community college district will insure that ancillary and support services are provided for the students including, but not limited to (1) counseling and guidance, and (2) placement assistance.

(e) Instruction provided under the immediate supervision and control of qualified faculty of the district.

(f) Performance objectives for each instructional area and a report regarding accomplishment of the objectives at the end of each contract period.

(g) Designation of responsibility to the contractor for maintaining records of student attendance and achievement. Such records shall be available for review at all times and submitted on a schedule developed by the community college district.

(h) Terms and conditions relating to cancellation and termination of the contract.

(i) The contractor is in compliance with title VI and title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq. and 2000e et seq.), title 9-IX of the Higher Education Act—Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.), section 504 of the federal Vocational Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Age Discrimination Act (42 U.S.C. § 6101), the U.S. Presidential Executive Order 11246 and subsequent amendments (if applicable), California Fair Employment and Housing Act (Government Code §§ 12900 et seq.), the California Unruh Civil Rights Act (Civil Code §§ 51-53) and all applicable state and federal health and safety regulations.

(j) The contractor provides, when required by law and at the contractor's own expense, workers' compensation insurance coverage for any student.

(k) The contractor provides indemnity and defense for the state and the community college district and their respective officers and employees, against any and all claims and liability for death, injury, loss and damage arising out of, or in any manner connected with, the performance of the contract. Such indemnity and defense shall be provided by an appropriate hold harmless clause and a policy of liability insurance coverage, the cost of which is to be borne by the contractor. Such policy shall name the Board of Governors of the California Community Colleges, the State and ~~public entity~~the community college district, along with their respective officers and employees as additional insureds.

(l) Minimum qualifications established by subchapter 4 (commencing with section 53400) of chapter 4 apply to persons who provide instruction under contracts entered into pursuant to Education Code section 8092.5, except that a district contracting for instruction under section 58058(b) may substitute a valid certificate to work or a license to practice in the neighboring state for a certificate to work or license to practice in California under section 53417.

Note: Authority cited: Sections 8090, 66700, ~~and 70901~~ and 71024, Education Code. Reference: Chapter 1, ~~A~~article 5 (commencing with ~~S~~section 8090), ~~D~~division 1, and section 70901, Education Code.

Comment: Statutory references are updated. In the very limited circumstance of a district contracting for vocational education with a postsecondary educational institution in a neighboring state where an employee of that institution provides instruction, the employee must meet general minimum qualifications, but may substitute a certificate to work or license to practice in that neighboring state for a certificate or license to practice in California. It appears that this issue arises only in the Lassen College cosmetology program, and the revision conforms the regulation to current practice.

34. Section 55720 of article 2 of subchapter 8 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55720. Offering Classes Under Flexible Calendar; Accountability of Employees Under Contract for 175 Days; Activities.

(a) Subject to the approval of the Chancellor pursuant to Section 55724, a community college district may designate an amount of time in each fiscal year for employees to conduct staff, student, and instructional improvement activities. These activities may be conducted at any time during the fiscal year. The time designated for these activities shall be known as “flexible time.”

(b) A district with an approved flexible calendar may designate as flexible time for an employee not more than 8.57 percent of that employee's contractual obligation for hours of classroom instruction which are eligible for state apportionments in that academic year, exclusive of any intersessions.

~~(c) Pursuant to Section 55726, a district with an approved flexible calendar shall ensure that all employees under contract with the district work at least 175 days, in each academic year.~~

Note: Authority cited: Sections 66700, 70901 and 84890, Education Code. Reference: Sections 70901 and 84890, Education Code.

Comment: The reference to employees working at least 175 days is inconsistent with individual employee schedules that permit differing work schedules and with district arrangements under alternative calendars.

35. Section 55729 of article 2 of subchapter 8 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55729. Full-time Equivalent Student (FTES) Units; Adjustments to Reflect Activities; Computation by Multiplier Factor.

(a) The Chancellor's Office shall adjust the actual units of full-time equivalent student of a district operating under a plan approved in accordance with ~~Sections 55720-32~~ this article to reflect the conduct of staff, student, and instructional improvement activities in lieu of scheduled instruction during flexible time. The adjusted units of full-time equivalent student shall be computed by multiplying the actual units of full-time equivalent student in the academic year, exclusive of any intersessions, computed pursuant to Section 58003.1, by a factor which does not change the full-time equivalent student which would have otherwise been generated if the time for the improvement activities had not been permitted and scheduled instruction had instead taken place.

(b) For courses other than those described in ~~Subsection subdivision~~ (b) of Section 58003.1, the multiplier factor shall equal the sum of the following:

- (1) 1.0; and

(2) the total of all the actual hours of flexible time of all instructors pursuant to ~~Section~~ 55720 in the fiscal year, divided by the total of all the actual hours of classroom instruction of all instructors in the academic year, exclusive of any intersessions.

(c) For those courses described in ~~Subsection-subdivision~~ (b) of ~~Section~~ 58003.1, this multiplier factor shall equal the ~~maximum-term length multiplier set forth in that Subsection-applicable to the district.~~

(d) The Chancellor shall also withhold the appropriate amount of state aid whenever there is a final audit finding that an instructor did not spend at least as much time performing staff, student, and instructional improvement activities as the amount of time he or she was released from classroom instruction.

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

Comment: The computation of the term length multiplier of (c) is adjusted to accommodate districts with compressed academic calendars.

36. Section 55756.5 of subchapter 9 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55756.5. Remedial Coursework Limit.

(a) This section implements and should be read in conjunction with the provisions of section 68 of chapter 973 of the Statutes of 1988, relating to the establishment of a limit on the amount of remedial coursework community college students may take. For the purposes of this section, “remedial coursework” refers to precollegiate basic skills courses as defined in ~~subsection-subdivision~~ (d) of section 55502 ~~of this part.~~

(b) A student's need for remedial coursework shall be determined using appropriate assessment instruments, methods, or procedures administered pursuant to ~~subchapter 6~~ (commencing with section 55500) of ~~division-chapter 6 of this part.~~ However, except as provided in ~~subsection-subdivision~~ (c) of this section, no student shall receive more than 30 semester units (or 45 quarter units) of credit for remedial coursework. Students having exhausted the unit limitation shall be referred to appropriate adult noncredit education services provided by a college, adult school, community-based organization, or other appropriate local provider with which the district has an established referral agreement.

(c) The following students are exempted from the limitation on remedial coursework described in ~~subsection-subdivision~~ (b) of this section:

(1) Students enrolled in one or more courses of English as a Second Language (ESL);

(2) Students identified by the district as having a learning disability as defined in section ~~56014-56036 of this part.~~

(d) The governing board of a district may provide a waiver of the limitation on remedial coursework with respect to any student who shows significant, measurable progress toward the development of skills appropriate to his or her enrollment in college-level courses. Such waivers, if granted, shall be provided pursuant to locally

developed standards which are reviewed and approved by the governing board. The standards shall include provisions which ensure that waivers are only given for specified periods of time or for specified numbers of units.

(e) A student who does not attain full eligibility status for college-level work within the limit described in ~~subsection-subdivision~~ (b) of this section shall, unless provided with a waiver, be dismissed and referred to adult noncredit education courses.

(f) A student may, upon successful completion of appropriate "remedial coursework," or upon demonstration of skills levels which will reasonably assure success in college-level courses, request reinstatement to proceed with college-level coursework.

(g) The governing board of ~~a~~-each district shall submit, through the established Management Information System, information necessary to enable the Chancellor to determine the following:

- (1) The effect of this section on students by sex, age, and ethnicity;
- (2) Success rates for students enrolled in "remedial coursework²;"
- (3) Attrition rates for students enrolled in "remedial coursework;"
- (4) Rates at which students are referred to and enroll in adult noncredit instruction;
- (5) Rates at which students who are referred to adult noncredit instruction subsequently enroll in college-level courses;
- (6) Term-to-term persistence rates for students;
- (7) Rates at which students directly enter employment after completing remedial coursework;
- (8) The extent to which students are exempted from the limitation specified in subdivision (b);
- (9) The extent to which students receive waivers, as authorized by subdivision (d);
and
- (10) The rate at which students are dismissed as described in subdivision (e).

Note: Authority cited: Sections 66700 and 70901-71020, 71062 and 84500.1, Education Code. Reference: ~~Sections~~Section 84500 and 84500.1, Education Code, Statutes of 1988, chapter 973, section 68.

Comment: A portion of this regulation was apparently not forwarded to the Secretary of State so that items (g)(3)-(10) were not reproduced in title 5. Legal references are updated.

37. Section 55761 of subchapter 9 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55761. District Policy for Course Repetition.

The governing board of a district maintaining a community college shall adopt and publish procedures or regulations pertaining to the repetition of courses for which substandard work has been recorded. For purposes of course repetition, academic renewal, and all other related provisions in this ~~part~~division, the term "substandard" shall be defined as meaning course work for which the grading symbols "D," "F," "FW,"

and/or “NC” (as defined in section 55758) have been recorded. The procedures or regulations may allow such courses to be repeated and the previous grade and credit to be disregarded in the computation of grade point averages. When course repetition occurs, the permanent academic record shall be annotated in such a manner that all work remains legible, insuring a true and complete academic history.

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

Comment: The “FW” symbol indicates that a student received a failing grade because the student ceased to participate in a course without officially withdrawing. Because the designation reflects a “substandard” symbol, it is added to the listings of “substandard” symbols in this provision and in section 58161. The term “division” is correct under the current hierarchy of title 5.

38. Section 55802 of subchapter 10 of chapter 6 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 55802. Associate in Arts Degree (Applicable Until July 1, 1983).~~

~~The governing board of a community college district shall confer the degree of associate in arts upon a student who in grades 13 and 14 has satisfactorily completed from 60 to 64 semester hours of work in a curriculum which the district accepts toward the degree (as shown by its catalog) and which includes all of the following minimum requirements, provided that 12 hours of the required credit hours were secured in residence at that community college:~~

~~(a) 18 semester units of study taken in a discipline or from related disciplines as listed in the Community Colleges “Classification of Instructional Disciplines.”~~

~~(b) 15 semester units of general education which shall include at least one course in each of the following areas~~

~~(1) Natural sciences. Those courses of study which deal with matter and energy and their interrelations and transformations (e.g., chemistry, physics, biology).~~

~~(2) Social sciences. The body of knowledge that relates to the human being as a member of society or component of society, such as the state, family, or any systematized human institution (e.g., economics, political science, sociology).~~

~~(3) Humanities. Those courses of study having primarily a cultural character (e.g., languages, literature, philosophy, fine arts).~~

~~(4) Learning skills. Courses, such as oral and written communication, logic, mathematics, and statistics, designed to facilitate acquisition and utilization of knowledge in natural sciences, social sciences, and humanities.~~

~~These courses may be eligible for partial satisfaction of the general education requirements for a baccalaureate degree at the California State University in accordance with the provisions of Section 40405 of this title.~~

~~(e) Ethnic studies courses shall be offered in one or more of the areas listed in subdivision (b).~~

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~~The community college may determine which courses satisfy the requirements of this subdivision.~~

~~The governing board may make exceptions to the residence requirement in any instance in which it determines that an injustice or hardship would otherwise be placed upon an individual student.~~

~~(d) The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection(b) of section 55810.~~

~~Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.~~

Comment: This section applies only to students who were in attendance prior to July 1, 1983. It is unlikely that such students have been in continuous attendance since then so as to warrant the retention of this regulation. If students claim to be subject to this regulation, their claims do not depend on keeping this regulation in effect.

39. Section 55803 of subchapter 10 of chapter 6 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 55803. Associate in Science Degree (Applicable Until July 1, 1983).~~

~~The governing board of a community college district may confer the degree of associate in science upon a student who in grades 13 and 14 has completed satisfactorily a minimum of 60 semester hours of work, which shall satisfy all the requirements for an associate in arts degree and shall include a major of at least 18 semester hours in the fields of engineering, physical and biological sciences, or occupational curriculum.~~

~~The provisions of this section shall be applicable to all students in attendance prior to July 1, 1983, unless provided otherwise by governing board policy adopted pursuant to subsection(b) of section 55810.~~

~~Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 66701 and 70901, Education Code.~~

Comment: This section applies only to students who were in attendance prior to July 1, 1983. It is unlikely that such students have been in continuous attendance since then so as to warrant the retention of this regulation. If students claim to be subject to this regulation, their claims do not depend on keeping this regulation in effect.

40. Section 55806 of subchapter 10 of chapter 6 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 55806. Minimum Requirements for the Associate Degree-~~(Applicable July 1, 1983).~~

The governing board of a community college district shall confer the degree of ~~A~~associate in ~~A~~arts or ~~A~~associate in ~~S~~science upon a student who has demonstrated competence in reading, in written expression, and in mathematics, and who has satisfactorily completed at least 60 semester units or 90 quarter units of college work. “College work” is defined as college credit courses acceptable toward the associate degree which have been properly approved pursuant to section 55002(a), or those courses that were not completed at a California community college district that would reasonably be expected to meet the standards of section 55002(a) if they were offered by a California community college district. This course work requirement must be fulfilled in a curriculum accepted toward the degree by a college within the district (as shown in its catalog). It must include at least 18 semester or 27 quarter units in ~~G~~general ~~E~~education and at least 18 semester or 27 quarter units in a major as prescribed in this section. Of the required units, at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree. Exceptions to residence requirements for the ~~A~~associate ~~D~~egree may be made by the governing board when it determines that an injustice or undue hardship would be placed on the student.

(a) Major Requirements. At least 18 semester or 27 quarter units of study taken in a single discipline or related disciplines, as listed in the ~~C~~community ~~C~~olleges “Taxonomy of Programs,” shall be required.

(b) General Education Requirements.

(1) Students receiving an ~~A~~associate ~~D~~egree shall complete a minimum of 18 semester or 27 quarter units of general education, including a minimum of three semester or four quarter units in each of the areas (A), (B) and (C) and the same minimum in each part of (D). The remainder of the unit requirement is also to be selected from among these four divisions of learning or as determined by local option:

(A) Natural Sciences. Courses in the natural sciences are those which examine the physical universe, its life forms, and its natural phenomena. To satisfy the ~~G~~general ~~E~~ducation ~~R~~requirement in natural sciences, a course shall be designed to help the student develop an appreciation and understanding of the scientific method, and encourage an understanding of the relationships between science and other human activities. This category would include introductory or integrative courses in astronomy, biology, chemistry, general physical science, geology, meteorology, oceanography, physical geography, physical anthropology, physics and other scientific disciplines.

(B) Social and Behavioral Sciences. Courses in the social and behavioral sciences are those which focus on people as members of society. To satisfy the general education requirement in social and behavioral sciences, a course shall be designed to develop an awareness of the method of inquiry used by the social and behavioral sciences. It shall be designed to stimulate critical thinking about the ways people act and have acted in response to their societies and should promote appreciation of how societies and social subgroups operate. This category would include introductory or integrative survey

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courses in cultural anthropology, cultural geography, economics, history, political science, psychology, sociology and related disciplines.

(C) Humanities. Courses in the humanities are those which study the cultural activities and artistic expressions of human beings. To satisfy the general education requirement in the humanities, a course shall be designed to help the student develop an awareness of the ways in which people throughout the ages and in different cultures have responded to themselves and the world around them in artistic and cultural creation and help the student develop aesthetic understanding and an ability to make value judgments. Such courses could include introductory or integrative courses in the arts, foreign languages, literature, philosophy, and religion.

(D) Language and Rationality. Courses in language and rationality are those which develop for the student the principles and applications of language toward logical thought, clear and precise expression and critical evaluation of communication in whatever symbol system the student uses.

1. English Composition. Courses fulfilling the written composition requirement shall be designed to include both expository and argumentative writing.

2. Communication and Analytical Thinking. Courses fulfilling the communication and analytical thinking requirement include oral communication, mathematics, logic, statistics, computer languages and programming, and related disciplines.

(2) While a course might satisfy more than one general education requirement, it may not be counted more than once for these purposes. A course may be used to satisfy both a general education requirement and a major requirement. Whether it may be counted again for a different degree requirement is a matter for each college to determine. Students may use the same course to meet a general education requirement for the ~~A~~associate ~~D~~degree and to partially satisfy a general education requirement at the California State University, if such course is eligible under the provisions of section 40405 of this title accepted by that system to satisfy a general education requirement.

(3) Ethnic Studies will be offered in at least one of the required areas.

(c) The provisions of this section shall be applicable to all students who enter a community college on or after July 1, 1983, provided that a governing board may specify an earlier implementation date pursuant to ~~subsection subdivision~~ (b) of ~~S~~section 55810.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections ~~66701~~, 70901 and 70902, Education Code.

Comment: The operative definition of "college work" is added for clarity. The reference to section 40405 is outdated; the important question is whether CSU accepts a course, and districts properly rely on lists issued by CSU for such course information. Legal note references are updated.

41. Section 56002 of article 1 of subchapter 1 of chapter 7 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 56002. Student with a Disability.

A “student with a disability” or “disabled student” is a person enrolled at a community college who has a ~~verified impairment which limits one or more major life activities, as defined in 28 C.F.R. 35.104, and~~ mental or physical disability as defined in Government Code section 12926 which imposes an educational limitation as defined in Section 56004. For purposes of reporting to the Chancellor under Section 56030, students with disabilities shall be reported in the categories described in Sections 56032-44.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: ~~Sections 67310-12-67310 et seq.~~ and 84850, Education Code.

Comment: The state definitions should be used in this section because the federal definitions are not as broad and following them could result in a violation of state law.

42. Section 56070 of article 4 of subchapter 1 of chapter 7 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 56070. Revenue from Special Classes.

(a) For purposes of Section 56064(b), the revenue derived from special classes, ~~for fiscal year 1995-96 and all subsequent years,~~ shall be calculated by adding together the following:

(1) the FTES instructional non-credit rate times the number of units of FTES in noncredit special classes; and

(2) the FTES instructional credit rate, not including indirect administrative costs, times the number of units of FTES in credit special classes for each college in the District.

~~(b) In implementing this section, the Chancellor shall insure that increases or decreases in the amount of special class revenue attributed to a district solely as a result of the adoption of the “disaggregate” method of calculation described in subdivision(A) shall be spread evenly over a three (3) year phase in period ending with full implementation for fiscal year 1995-96.~~

(e) Revenue from special classes shall be used for provision of support services or instruction pursuant to Sections 56026 and 56028 and shall not be used for indirect administrative costs as defined in Section 56068.

Note: Authority cited: Sections 67312, 70901 and 84850, Education Code. Reference: ~~Sections 67310-12-67310 et seq.~~ and 84850, Education Code.

Comment: Outdated provisions are removed and note reference revisions are made.

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43. Section 56602 subchapter 4 of chapter 7 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 56602. Chancellor's Community College Real Estate Education Endowment Fund Advisory Committee.

The number of individuals on the ~~A~~advisory ~~C~~committee shall be determined by the Real Estate Commissioner and the Chancellor. The Chancellor shall appoint the ~~A~~advisory ~~C~~committee.

Membership on the ~~A~~advisory ~~C~~committee shall include equal representation from the real estate licensees and California community colleges, with consideration of geography, ~~and diversity, ethnicity and gender~~; the Real Estate Commissioner and the Chancellor or their authorized representatives; and such additional representation as the Chancellor and Real Estate Commissioner deem appropriate.

Note: Authority cited: Sections 66700 and 70901, Education Code. Reference: Sections 10450.6 and 10451.5, Business and Professions Code.

Comment: Consideration of ethnicity and gender in the selection of membership could raise concerns under Proposition 209 and discrimination provisions.

44. Section 56700 of subchapter 6 of chapter 7 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 56700. Underrepresented Students Special Project Fund.~~

~~(a) The purpose of the Underrepresented Students Special Project Fund is to develop and disseminate alternative learning and teaching strategies designed to:~~

- ~~(1) prepare underrepresented students for college-level work;~~
- ~~(2) increase the enrollment, retention and transfer of underrepresented students; and~~
- ~~(3) reduce underrepresentation of certain groups, particularly those with limited English proficiency and students with disabilities in vocational fields which prepare these students for employment.~~

~~(b) Projects funded under this section shall address one or more of the priorities established by the Board of Governors which include, but are not limited to:~~

- ~~(1) enrollment, retention and transfer of underrepresented students in both vocational education and transfer education;~~
- ~~(2) classroom-based research with an emphasis on collaborative learning methods and other teacher effectiveness strategies in working with underrepresented students;~~
- ~~(3) dropout prevention for at-risk youth;~~
- ~~(4) retention practices for students with disabilities; and~~
- ~~(5) assessment of the impact of campus climate on the academic performance of underrepresented students.~~

~~(c) As used in this section:~~

~~(1) “underrepresented students” means students from groups which the Chancellor finds have been historically underrepresented or are currently underrepresented in the student bodies of community colleges with respect to their numbers in the general adult population. Such groups include, but are not limited to, African Americans, Chicano/Latinos, American Indians, Alaskan Natives, Asian Americans, students with disabilities, students receiving services through Extended Opportunity Programs and Services (EOPS), and students receiving instruction or support services for Limited-English Proficiency (LEP) or English as a Second Language (ESL).~~

~~(2) “classroom based research” means the process of researching and evaluating various techniques which will enhance the learning of underrepresented, high risk students or improve the teaching effectiveness of faculty through the application of various activities and strategies in the classroom, such as curriculum course design, course content, process and resources intended to improve educational outcomes.~~

~~(3) “campus climate” means the environment on a college campus which affects the teaching, working and learning conditions of the community of students, faculty, administrators, and staff.~~

~~(4) “dropout prevention” means the strategies and activities which allow high school and college students to persist in a multicultural and gender equitable learning environment and succeed by completing a terminal degree (i.e., high school diploma or a GED).~~

~~(5) “retention” means assessing, changing, or adapting mainstream education for the purpose of preventing underrepresented or high risk students from dropping out.~~

~~(6) “transfer” means the outcome of students who engage in a prescribed course of study which leads to the students' eligibility for admissions to a four year public or independent college or university.~~

~~Note: Authority cited: Section 70901, Education Code. Reference: Section 70901, Education Code.~~

Comment: The Fund has not been operational for a number of years, so this provision should be removed.

45. Section 58003.5 of article 2 of subchapter 1 of chapter 9 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 58003.5. Computation of ADA for Fiscal Year 1982-83.~~

~~(a) Notwithstanding any other provision of this article or Article 3 (commencing with Section 58020) of this chapter, and except as provided in subsection (b) of this section, average daily attendance for fiscal year 1982-83 shall be computed and reported in accordance with the provisions of Education Code Section 84520 as it read on December 31, 1981, as well as in accordance with all regulations, standards, and procedures adopted to implement that authority prior to January 1, 1982.~~

~~(b) Subsection(a) of this section shall not be applicable to a district for fiscal year 1982-83 if the district requests to have the provisions of this article and Article 3 made applicable to it for fiscal year 1982-83, and the Chancellor grants such request.~~

~~Note: Authority cited: Sections 71020, 76300 and 84520, Education Code. Reference: Sections 76300 and 84520, Education Code.~~

~~Comment: There is no continuing need for this section that concerned fiscal year 1982-83.~~

46. Section 58004 of article 2 of subchapter 1 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58004. Application of Census Procedures.

(a) The census procedures specified in subdivisions (b) and (c) of section 58003.1 shall apply to all credit courses, except for ~~including~~ work experience and independent study pursuant to subdivision (f) of section 58003.1, ~~except for and~~ credit courses which are being reported on an actual attendance basis pursuant to subdivision (g) of section 58003.1.

(b) The single primary term length census procedure specified in subdivision (b) of section 58003.1 shall be applied using the following:

(1) The term length multiplier shall be determined by counting each week in which at least three days of instruction or examination in term length courses are scheduled.

(2) Courses scheduled coterminous with the term are those courses scheduled to meet each week of the term, exclusive of final examination scheduling.

(3) The census procedure specified in this ~~subsection~~ subdivision may not be applied to any term shorter than ten weeks.

(c) Districts shall, according to procedures adopted by the governing board, clear the rolls of inactive enrollment. Inactive enrollment in a course is defined as follows:

As of each census day, any student who has

(1) Been identified as a no show, or

(2) Officially withdrawn from the course, or

(3) Been dropped from the course. A student shall be dropped if no longer participating in the course, except if there are extenuating circumstances. "No longer participating" includes, but is not limited to, excessive unexcused absences but must relate to nonattendance. "Extenuating circumstances" are verified cases of accidents, illness, other circumstances beyond the control of the student, and other conditions defined by the governing board and published in regulations. The "drop date" shall be the end of business of the day immediately preceding the census day.

Note: Authority cited: Sections 66700, 70901, 78401 and 84500, Education Code. Reference: Sections 70901 and 84500, Education Code.

Comment: Language regarding census procedures is clarified. The term “no longer participating” is vague and could be interpreted to allow dropping students who are not performing well academically – which is not the intent of the section. The basis for dropping students remains their nonattendance at class.

47. Section 58009 of article 2 of subchapter 1 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58009. Application of Independent Study or Work-Experience Attendance Procedure.

(a) One weekly student contact hour shall be counted for each unit of credit for which the student is enrolled as of the census day prescribed in section 58003.1(b) or(c)-except for independent study laboratory courses. For independent study laboratory courses, weekly student contact hours shall be equivalent to those which would be generated for the same student effort in a laboratory course not offered as independent study.

(b) For credit courses full-time equivalent students in independent study or work-experience education courses in primary terms is computed by multiplying the weekly student contact hours authorized pursuant to ~~subsection-subdivision~~ (a) of this section, generated as of the census date prescribed in section 58003.1(b) by the term length multiplier as provided for in section 58003.1, and dividing by 525.

(c) For noncredit courses conducted as distance education, full-time equivalent students is computed on a census basis as prescribed in section 58003.1(f)(2).

(d) Full-time equivalent student in independent study or work-experience education courses conducted during a summer or other intersession is computed by multiplying the weekly student contact hours, authorized pursuant to ~~subsection-subdivision~~ (a) of this section, generated in each course, by a course length multiplier that produces the same total weekly student contact hours for the same student effort as would be generated in such courses conducted in the primary terms, and dividing by 525.

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

Comment: The process for independent study lab courses is clarified.

48. Section 58010 of article 2 of subchapter 1 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58010. Reporting Date Procedures.

The governing board of each community college district shall report full-time equivalent student in accordance with the provisions of ~~§~~section 58003.4.

(a) Full-time equivalent student for courses using census procedure may be reported in either the fiscal year in which the census day procedure is completed or in which the course ends.

If the summer, full-time equivalent student, reported by a district as specified above, impacts other districts' apportionment to the detriment of the system by maximizing the district's reported FTES, and thereby resulting in the district's prior or succeeding year's reported FTES being less than its funded base FTES, the Chancellor shall have the authority to prescribe to the district the reporting of its summer FTES.

(b) For courses using actual student contact hours of attendance procedure, the full-time equivalent student shall be reported in the period immediately following the completion of the course, even if the course overlaps fiscal years.

~~(c) The amendments to this section are to become operative effective July 1, 1998 and shall remain in effect for fiscal year 1998-99 and 1999-2000. Subsequent to June 31, 2000, this section shall revert to the provisions as it read in fiscal year 1997-98, unless a later adopted regulation deletes or extends this date.~~

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

Comment: The deletion of subdivision (c) removes the "sunset" provision and brings the section into conformance with current practice.

49. Section 58051.6 of article 5 of subchapter 1 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58051.6. Full-Time Equivalent Student; Adult Education for Inmates of City, County, or City and County Jail, Road Camp, Farm or Federal Correctional Facility.

(a) Notwithstanding ~~Sections 58050 and 58051.5(b)(a)(3)~~, the governing board of a community college district that provides classes for inmates of any city, county, or city and county jail, road camp, or farm for adults, or a federal correctional facility may include the units of ~~average daily attendance~~ full-time equivalent student generated in those classes and computed pursuant to ~~Section 58003.1~~, for purposes of state apportionments. However, apportionments for ~~this average daily attendance~~ these units, whether generated in credit or noncredit courses, shall be limited to the lesser of either the district's prior year's level of funding or the noncredit apportionment rate as determined by the Chancellor, multiplied by the ~~average daily attendance~~ full-time equivalent student generated in such classes.

(b) Any courses conducted under this ~~Section~~ shall conform to the criteria and standards adopted by the Board of Governors under ~~Section 70901~~ of the Education Code, and shall be submitted to the Board of Governors for approval.

~~(c) Districts providing classes for inmates pursuant to this Section shall report the average daily attendance generated in such classes on forms provided by the Chancellor.~~

Note: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Sections 84810.5 and 84750, Education Code.

Comment: The section reference is corrected. Revisions that were described in the September 2005 Board item allowed programs in state facilities and apportionment at the usual credit or noncredit rate. However, those revisions were based on SB 672 that was vetoed subsequent to the Board meeting, and the related revisions have been removed. Subdivision (c) is deleted because it is unnecessary; section 58003.4 already requires all reports of FTES be on forms prescribed by the Chancellor.

50. Section 58106 of article 1 of subchapter 2 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58106. Limitations on Enrollment.

In order to be claimed for purposes of state apportionment, all courses shall be open to enrollment by any student who has been admitted to the college, provided that enrollment in specific courses or programs may be limited as follows:

(a) Enrollment may be limited to students meeting prerequisites and corequisites established pursuant to ~~Sections 55200-55202 of this Division,~~

(b) Enrollment may be limited due to health and safety considerations, facility limitations, faculty workload, the availability of qualified instructors, funding limitations, the constraints of regional planning or legal requirements imposed by statutes, regulations, or contracts. The governing board shall adopt policies identifying any such limitations and requiring fair and equitable procedures for determining who may enroll in affected courses or programs. Such procedures shall be consistent with one or more of the following approaches:

(1) limiting enrollment to a “first-come, first-served” basis or using other nonevaluative selection techniques to determine who may enroll; or

(2) limiting enrollment using a registration procedure authorized by ~~Section 58108;~~
or

(3) in the case of intercollegiate ~~completion~~competition, honors courses, or public performance courses, allocating available seats to those students judged most qualified; or

(4) limiting enrollment in one or more sections of a course to a cohort of students enrolled in one or more other courses, provided however, that a reasonable percentage of all sections of the course do not have such restrictions; or

(5) with respect to students on probation or subject to dismissal, the governing board may, consistent with the provisions of ~~Sections 55754-55755 of this Part,~~ limit enrollment to a total number of units or to selected courses, or require students to follow a prescribed educational plan.

(c) A student may challenge an enrollment limitation established pursuant to ~~Subsection-subdivision (b) of this Section~~ on any of the following grounds:

(1) the enrollment limitation is either unlawfully discriminatory or is being applied in an unlawfully discriminatory manner;

(2) the district is not following its policy on enrollment limitations;

(3) the basis upon which the district has established an enrollment limitation does not in fact exist; or

(4) any other criteria established by the district.

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(d) The student shall bear the burden of showing that grounds exists for the challenge. Challenges shall be handled in a timely manner, and if the challenge is upheld, the district shall waive the enrollment limitation with respect to that student.

(e) In the case of a challenge under ~~Subsection subdivision (c)(1) of this Section~~, the district shall, upon completion of the challenge procedure ~~established pursuant to this Section~~, advise the student that he or she may file a formal complaint of unlawful discrimination pursuant to ~~S~~subchapter 5 (commencing with ~~S~~section 59300) of ~~C~~chapter 10 ~~of this Division~~. Completion of the challenge procedure shall be deemed to ~~satisfy the requirement of Section 59328(b) that the district and the student attempt~~ be an effort at informal resolution of the complaint under section 59327.

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

Comment: A typographical error is corrected, and formatting changes made. The informal resolution provision of the discrimination regulations is now section 59327, and informal resolution efforts are no longer required.

51. Section 58146 of article 5 of subchapter 2 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58146. District Unable to Maintain School for Prescribed Time; Full-Time Equivalent Student Materially Decreased.

(a) A district which is prevented from maintaining its schools during a fiscal year for at least 175 days because of fire, flood, or epidemic, or because of any order of any military officer of the United States or of the state to meet an emergency created by war, or of any civil officer of the United States, of the state, or of any county, city and county, or city authorized to issue such order to meet an emergency created by war, or because of other extraordinary conditions, or because of the inability to secure or to hold an instructor, or because of the illness of the instructor, where the lack of an instructor would close a college, which fact shall be shown to the satisfaction of the Board of Governors by the affidavits of the members of the governing board of the district, shall receive the same apportionment from the State School Fund as it would have received had it not been so prevented from maintaining school for at least 175 days.

(b) Where a community college in a district maintaining more than one community college is closed for a part of a term by order of a city or county board of health or of the State Board of Health, or because of fire, flood, impassable roads, epidemic, or other emergency, or by an order provided for in (a), the full-time equivalent student of the community college shall be estimated separately, as provided in (c), and added to the full-time equivalent student of the other community colleges of the district.

(c) Whenever the full-time equivalent student of any district during any fiscal year has been materially decreased during any fiscal year because of:

- (1) fire,
- (2) flood,

- (3) impassable roads,
- (4) an epidemic,
- (5) the imminence of a major safety hazard as determined by the local law enforcement agency,
- (6) a strike involving transportation services to students provided by a ~~non~~nondistrict entity, or
- (7) the unavailability of classroom facilities leased by the district where the unavailability commences July 1, 2005, or thereafter and is caused by extraordinary factors wholly external to and beyond the control of the district, or
- (8) an order provided for in (a), such ~~The facts demonstrating the applicability of one of the circumstances described in this subdivision shall be established to the satisfaction of the Board of Governors-Chancellor~~ by affidavits of the members of the governing board of the district. The funding workload measures of the district for the fiscal year shall be estimated by the Board of Governors in such manner as to credit to the district from the State School Fund approximately the total which would have been credited to the district had the emergency not occurred or had the order not been issued. The provisions of this ~~S~~section shall apply to any funding workload measure which occurs during any part of a fiscal year.

(d) As a condition to receiving the credit under subdivision (c), the district must demonstrate to the satisfaction of the Chancellor that it made good faith efforts to seek alternate facilities that were unaffected by the circumstances described in subdivision (c).

(e) No credit under subdivision (c) will be allowed for the unavailability of facilities for more than one full term beyond the beginning of the circumstances described in subdivision (c) unless authorized by the Board of Governors.

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

Comment: The revisions clarify that an emergency is not created by the absence of an instructor unless that absence actually closes the college for that day. A new qualifying situation is added where leased facilities become unavailable for extraordinary reasons beyond a district's control. Whenever facilities become unavailable under the provisions of this section, districts must make good faith efforts to find alternative facilities, and a limit is set on the amount of time that districts can continue to receive credit under these provisions.

52. Section 58160 of article 5 of subchapter 2 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58160. Noncredit Course Funding.

(a) Only those noncredit courses which are eligible for funding pursuant to ~~S~~section 84711—84757 of the Education Code may be claimed for purposes of state apportionments.

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(b) The provisions of ~~Education Code Sections 8538 and 84500, and sections 58050, 58051, 58051.5, and 58130~~ and related provisions of this chapter also apply in determining whether a noncredit course is eligible for funding.

Note: Authority cited: Sections 66700, 70901 and 78401, Education Code. Reference: Sections ~~8538, 70901, 84500 and 84711~~ 84757, Education Code.

Comment: Outdated section references are corrected. Education Code section 8538 refers to agreements between community college districts and school districts for offering adult education; such agreements are not required, so the reference is removed.

53. Section 58161 of article 5 of subchapter 1 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58161. State Apportionment for Course Repetition.

(a) Except as specifically authorized by statute or by this section, no state apportionment shall be allowed for the attendance of a student in a course in which the student has previously received a grade from the district.

(b) State apportionment may be claimed for the attendance of a student in a course in which the student has received a grade only if:

(1) The student is repeating the course to alleviate substandard work which has been recorded on the student's record. The term "substandard" shall be defined as course work for which the grading symbol "D," "F," "FW," or "N/C" has been recorded; or

(2) The district finds that the student's previous grade is, at least in part, the result of extenuating circumstances. Extenuating circumstances are verified cases of accidents, illness, or other circumstances beyond the control of the student; or

(3) The district has determined that a student should repeat a course because there has been a significant lapse of time since the student previously took the course.

The attendance of students repeating a course as authorized by this ~~subsection~~ subdivision may be claimed only once for state apportionment.

(c) When course repetition is necessary for a student to meet a legally mandated training requirement as a condition of continued paid or volunteer employment, the district may claim state apportionment each time the student repeats the course.

(d) State apportionment for repetition of courses not expressly authorized by this section may be claimed in accordance with the following procedure:

(1) The district must identify the courses which are to be repeatable, and designate such courses in its catalog.

(2) The district must determine and certify that each identified course is one in which the course content differs each time it is offered, and that the student who repeats it is gaining an expanded educational experience for one of the following reasons:

(A) Skills or proficiencies are enhanced by supervised repetition and practice within class periods; or

(B) Active participatory experience in individual study or group assignments is the basic means by which learning objectives are obtained.

(3) The district must develop and implement a mechanism for the proper monitoring of such repetition.

(4) The attendance of students repeating a course pursuant to this subsection subdivision may be claimed for state apportionment for not more than three semesters or five quarters.

Note: Authority cited: Section 70901, Education Code. Reference: Section 70901, Education Code.

Comment: The "FW" symbol indicates that a student received a failing grade because the student ceased to participate in a course without officially withdrawing. Because the designation reflects a "substandard" symbol, it is added to the listings of "substandard" symbols in this provision and in section 55761.

54. Section 58317 of subchapter 4 of chapter 9 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 58317. Special Trustee Following Notice of Inadequate Plan.~~

~~(a) Notwithstanding any other provision of this subchapter, in the circumstances described in subdivision(b), the Chancellor may appoint or assign a special trustee at district expense for the period of time necessary for the district to achieve fiscal stability or solvency or to ensure compliance with the principles of sound fiscal management set forth in section 58311. The special trustee shall have recognized expertise in finance, and may employ any staff necessary, or contract for services necessary, to assist the trustee. The Chancellor shall determine the duties of the special trustee, which may include, but are not limited to, any or all of the following:~~

~~(1) Reviewing and monitoring the plans, reports, and other financial materials required under sections 58310 and 58312.~~

~~(2) Requiring any further modifications to the fiscal or educational plans which he or she deems necessary.~~

~~(3) Determining district spending levels and priorities to further the district's achievement of fiscal stability or solvency or to become compliant with the principles of sound fiscal management.~~

~~(4) Approving or disapproving actions of the district which affect or relate to the implementation of the fiscal or educational plans, which affect or relate to achieving fiscal stability or solvency, or which affect or relate to becoming compliant with the principles of sound fiscal management.~~

~~(5) Assuming overall management and control of the district, including assumption of the legal rights, powers and duties of the governing board of the district to the full extent deemed necessary by the trustee in order for the district to achieve fiscal stability or solvency or to ensure compliance with the principles of sound fiscal management set forth in section 58311. The governing board may not exercise any authority so assumed.~~

~~(b) The Chancellor may appoint a special trustee as provided in subdivision(a) if all of the following circumstances exist:~~

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~~(1) The Chancellor or his or her designee has placed a district in the priority one category of the Chancellor's Office fiscal watch list which indicates that the district has a reserve balance below 2% or faces imminent fiscal problems requiring immediate corrective action to avoid the need for an emergency apportionment;~~

~~(2) The district has been asked to prepare a plan under section 58310; and~~

~~(3) Prior to May 31, 2004, the district was notified by the Chancellor or his or her designee that the plan failed to fully address questions regarding the district's fiscal problems or was otherwise inadequate.~~

~~(e) The Chancellor may require the district, at district expense, to employ staff or contract for services necessary to assist the trustee, to compensate the trustee for his or her services, and for any expenses or liabilities that he or she may incur, and to insure, indemnify, defend and hold harmless the trustee, the Office of the Chancellor and the state for any liability arising out of or in connection with the services of the trustee. Alternatively, or to the additional extent necessary, the Chancellor may withhold funds necessary to pay for any or all such costs incurred in performing the services described herein from funding that would otherwise have been apportioned to the district under Section B of the State School Fund.~~

~~(d) The Chancellor may assign or appoint a special trustee having the authority described in subdivision(a) to any district that requires intervention described in section 58310 within the five fiscal years immediately following the ending date of the services of a previously assigned special trustee. The renewed assignment or appointment of a special trustee under this subdivision may be made without first satisfying the conditions specified in subdivisions(b) where the Chancellor or his or her designee makes a finding that if trends continue unabated, the district will need an emergency apportionment within three years or that the district is noncompliant with the principles of sound management specified in section 58311. The district shall pay all costs incurred by the special trustee in accordance with subdivision(c).~~

~~Note: Authority cited: Sections 66700, 70901 and 84040, Education Code. Reference: Section 70901, Education Code.~~

~~Comment: This section was enacted as an emergency regulation, and as such was effective for only 120 days from its operative date (June 15, 2004). It should be repealed to avoid confusion regarding its continuing effect.~~

55. Section 58501 of article 1 of subchapter 6 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58501. Enrollment Fee.

(a) Semester: The enrollment fee charged of students enrolled in a regular semester shall be \$13 a per credit unit rate prescribed by the Legislature.

(b) Quarter: The enrollment fee charged of students enrolled in a regular quarter session shall be \$9 two-thirds of the per credit unit rate for a regular semester.

(c) Fractional Units: The enrollment fee charged for courses with fractional unit value shall be computed by multiplying the fraction times the applicable semester or quarter unit rate and rounding off to the nearest dollar.

Note: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: ~~Sections~~ Section 76300 and ~~76330~~, Education Code.

Comment: Specific dollar values are removed so that adjustments do not require continuous regulation changes. The reference to repealed section 76330 is removed.

56. Section 58503 of article 1 of subchapter 6 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58503. Variable Unit Classes.

A student shall be charged for a variable unit class at the time the student enrolls in the class. The enrollment fee ~~or differential enrollment fee~~ shall be based on the number of units in which the college enrolls the student. If the student later earns additional units, the student may add those units pursuant to the district's policy for adding classes. Any additional enrollment fee ~~or differential enrollment fee~~ shall then be charged of the student. No refund shall be made for units not earned by the student, except as provided in section 58508.

Note: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: ~~Sections~~ Section 76300 and ~~76330~~, Education Code.

Comment: Section 76330 was repealed; the differential fee no longer exists. The conditions applicable to refunds should apply to these classes.

57. Section 58509 of article 1 of subchapter 6 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58509. Authority of Chancellor To Waive Provisions To Accommodate Students Impacted by Wildfires.

(a) Notwithstanding section 58508, a community college district may provide a full refund of enrollment fees to any student who withdrew from one or more classes ~~after October 1, 2003~~, where such withdrawal was necessary because the student was engaged in fighting wildfires, was forced to evacuate his or her home due to such fires, or suffered other loss or injury as a result of such fires.

(b) Notwithstanding section 55758, a community college district need not record a "W" on the academic records of a student who withdraws from one or more classes due to any of the circumstances described in ~~subsection~~ subdivision (a).

(c) The Chancellor is authorized, upon receipt of a written request from a community college district, to waive any provision of this title in order to accommodate students affected by any of the circumstances described in ~~subsection~~subdivision (a).

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

Comment: This section was enacted as an emergency regulation, and as such was effective for only 120 days from its operative date (January 12, 2004). The proposed change makes permanent the refund and withdrawal provisions for students who are adversely affected by wildfires.

58. Section 58620 of subchapter 7 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58620. Student Eligibility: Board of Governors Grant.

To be eligible for a Board of Governors grant, a student must:

(a) Be a California resident; so long as a person qualifies for a military exception pursuant to Education Code section 68074 or section 68075, he or she shall be deemed a California resident for purposes of this section.

(b) Meet one of the following criteria:

(1) Income Standards.

(A) Be a single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the ~~US-U.S.~~ Department of Health and Human Services Poverty Guidelines for a family of one; ~~Or~~ be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the ~~US-U.S.~~ Department of Health and Human Services Poverty Guidelines for a family of two.

(B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the ~~US-U.S.~~ Department of Health and Human Services Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size.

(C) Provide documentation of taxable or untaxed income.

(D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the ~~US-U.S.~~ Department of Health and Human Services Poverty Guidelines for a family of that size.

(E) Be an independent student whose Estimated Family Contribution as determined by ~~F~~Federal ~~M~~Methodology is equal to zero or a dependent student for whom the parent portion of the Estimated Family Contribution as determined by ~~F~~Federal ~~M~~Methodology is equal to or less than zero.

(F) For purposes of this ~~subsection~~subdivision, ~~US-U.S.~~ Department of Health and Human Services Poverty Guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

(2) Current recipient of benefits described in Education Code section 76300(g).

(A) At the time of enrollment be a recipient of benefits under the Temporary Assistance ~~to~~ for Needy Families (TANF) program. A dependent student whose parent(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian.

(B) At the time of enrollment be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent(s) or guardian(s).

(C) At the time of enrollment be a recipient of benefits under the General Assistance program.

(D) Provide documentation that the student if a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.

(3) Need-Based Financial Aid Eligibility. Any student who has been determined financially eligible for federal and/or state needed-based financial aid.

Note: Authority cited: Sections 66700, 68044, 70901, and ~~72252-76300~~, Education Code. Reference: Sections 68074, 68075, and 76300(g) and (h), Education Code; 20 U.S.C. section 1070(a); and 34 C.F.R. section 674.12; ~~and Section 19, Chapter 1, Statutes of 1984.~~

Comment: Education Code sections 68074 and 68075 establish residence classification for members of the armed forces and for their dependents "for the purposes of determining the amount of tuition and fees." The System Office interprets the scope of this residence classification to include eligibility for a fee waiver. Accordingly, military members and their dependents should be considered California residents for purposes of this section. Section references are updated. The referenced statutes of 1984 appropriated sums for the periods July 1, 1984, through Jan. 1, 1988, and appear to have no continuing effect.

59. Section 58776 of article 8 of subchapter 8 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58776. Budget Stability.

(a) Of the adjustment made pursuant to ~~S~~subdivision (h) of ~~S~~section 58774, which is related to credit instruction, instructional services, student services, noncredit activities, and the corresponding institutional support, the district shall receive an amount for budget stability, which is not to be included in subsequent year base revenue computations or in the computations affecting the distribution of program improvement revenue pursuant to ~~S~~section 58775, ~~as follows:~~

~~(1) In the year after the decline, the lesser two thirds of the adjustment or the adjustment less any increase due to restoration as specified in Subdivision(b).~~

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~~(2) In the second year after the decline, the lesser of one-third of the adjustment or the adjustment less any increase due to restoration as specified in Subdivision(b) during the first and second year after the decline.~~

~~(b) "Restoration workload" means an amount set by the Chancellor for allowable restoration based on any decline that occurred during the three prior years. Districts shall receive stability funding only in the initial year of decrease in FTES in an amount equaling the revenue loss associated with the workload reduction for that year.~~

Note: Authority cited: Sections 66700, 70901 and 84570, Education Code. Reference: Section 84750, Education Code; 2003 Budget Act, item 6870-101-0001.

Comment: The 2003 Budget Act limited budget stability to one year, and that limitation was later made permanent; the formula is adjusted accordingly. Since the September Board meeting, slight revisions to the new language in (b) have been provided by the Fiscal Services Unit to better clarify the operation of the provision.

60. Section 58782 of article 9 of subchapter 8 of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58782. Computation and Limitations on State Aid.

(a) The provisions of subchapter 1 (commencing with section 58000) and subchapter 2 (commencing with section ~~58100~~58102) of chapter 9 shall be applicable in the computation of full-time equivalent student to the extent such provisions do not conflict with the principles or provisions of this subchapter.

(b) Notwithstanding any other provisions of law or regulation, full-time equivalent student (FTES) shall be computed as follows:

(1) ~~Credit full-time equivalent student (FTES)~~ generated by California residents are computed in accordance with the computation described in section 58003.1 without the count of student contact hours as of the second census week or day (three-fifths of the way through the term or course) or the application of the statewide attendance factor (.911), plus actual hours of attendance in positive attendance courses divided by 525, ~~and, if applicable, adjusted by a factor derived pursuant to section 58188.~~

(2) ~~Noncredit full-time equivalent student (FTES)~~ generated by California residents and nonresidents attending courses described in Education Code section ~~84711-84757~~ are computed in accordance with the computations described in section 58007 ~~and, if applicable, adjusted by a factor derived pursuant to section 58188.~~

(c) In accordance with section 58704(h), the Chancellor shall, as necessary, interpret the provisions specified in ~~subsection~~ subdivision (a) for consistency with the provisions of this subchapter.

Note: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 84750, Education Code.

Comment: References to repealed Education Code section 84711 and title 5, sections 58100 and 58188 are updated.

61. Section 59010 of subchapter 2 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59010. Method of Accounting.

(a) The Board of Governors hereby adopts and incorporates by reference, into this provision of the California Code of Regulations, the California Community Colleges Budget and Accounting Manual chapters 2 through 5 as revised September 1999. This section shall become operative July 1, 2000.

(b) Revisions made to the Budget and Accounting Manual after July 1, 2000 shall be considered incorporated by reference into this provision when they have been adopted by the Board.

Note: Authority cited: Sections 66700; and 70901—and 71024, Education Code. Reference: Section 70901, Education Code.

Comment: The addition of subdivision (b) allows Board-adopted revisions to the Budget and Accounting Manual to be incorporated as part of this regulation without repeatedly amending the regulation itself. Because the Budget and Accounting Manual changes would only be incorporated by reference if they are adopted by the Board, public notice and participation are ensured through the Board meeting procedures, and the adopted changes will always be available as a Board agenda item. Section 71024 is removed; it merely verifies that powers that once belonged to the State Board of Education and other K-12 entities now reside with the Board of Governors. The section has no relationship to the Budget and Accounting Manual.

62. Section 59011 of subchapter 2 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed:

~~**§ 59011. Method of Accounting.**~~

~~The Board of Governors hereby adopts and incorporates by reference, into this provision of the California Code of Regulations, the California Community Colleges Budget and Accounting Manual chapters 2 through 5 as revised July 1992. This section shall become operative July 1, 1993 and shall become inoperative June 30, 2000.~~

~~Note: Authority cited: Sections 66700, 70901 and 71024, Education Code. Reference: Section 70901, Education Code.~~

Comment: This section is outdated and should be repealed. The current version of the Budget and Accounting Manual is incorporated by reference into section 59010.

63. Section 59112 of subchapter 3 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59112. Audit Resolution Actions.

(a) If, upon reviewing a citing, the district's response and any other available information, the Chancellor finds that there is a need for corrective action to resolve a citing, the Chancellor may require the district to do one or more of the following:

- (1) Submit a corrected apportionment ~~claim~~attendance report,
- (2) Implement procedures to ensure future compliance with the rules and regulations in question, or
- (3) Report periodically to the Chancellor on the status of actions taken to comply with the rules and regulations in question.

(b) If, upon reviewing a citing, the district's response and any other available information, the Chancellor finds that there is no need for corrective action to resolve the citing, the Chancellor shall so inform the district as expeditiously as possible.

Note: Authority cited: Sections 66700, 70901, 71020.5, 84040 and 84500, Education Code. Reference: Sections 70901 and 84040, Education Code.

Comment: The change is made to refer to the actual report name.

64. Section 59114 of subchapter 3 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59114. Apportionment Adjustments.

The Board of Governors shall make any adjustments necessary in future apportionments of all state funds; to resolve errors identified through Chancellor audits or reviews under section 59100, and/or to correct any audit exceptions revealed by audit reports filed in accordance with §section 59106 or §section 84040.5 of the Education Code or by Chancellor reviews under section 59108.

Note: Authority cited: Sections 66700, 70901, 71020.5, 84040 and 84500, Education Code. Reference: Sections 70901, 84040 and 84040.6~~5~~, Education Code.

Comment: The changes align the subchapter provisions to confirm that apportionment adjustments may result from audit exceptions as well as from problems revealed in Chancellor reviews.

65. Section 59116 of subchapter 3 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59116. Student Attendance; Accountability for Accounting and Reporting; Minor or Inadvertent Errors; ~~Appointment~~Apportionment; Discrepancy; ~~Costs of Implementation; Positive Adjustments.~~

(a) It is the intent of the Board of Governors in adopting this section that districts shall be fully accountable for the accuracy of the accounting and reporting of student attendance and shall promptly resolve inaccuracies in attendance accounting and reporting. However, it is also the intent of the Board of Governors that any minor or inadvertent errors in a district's student attendance records shall be resolved ~~in a fair and equitable manner by the Chancellors~~ as described below.

(b) The apportionment to a district for any fiscal year following the fiscal year affected ~~by in which an annual or special audit or Chancellor's review finding is made conducted in the 1980 81 fiscal year or in any fiscal year thereafter, or affected by the district's declaration of any fiscal year following the fiscal year for which a district declares a discrepancy~~ subsequent to the submission of the annual or recalculation apportionment student attendance report, shall not be affected by the audit, review or declaration, provided all of the following conditions are met:

(1) The district has corrected the basis for the audit or Chancellor's review finding or declaration of discrepancy to the satisfaction of the Chancellor.

(2) ~~During~~ The district has unfunded FTES that would have otherwise been fundable in the fiscal year immediately following the fiscal year in for which the audit or Chancellor's review finding or declaration of discrepancy was made. Any such unfunded FTES can be applied as a full or partial offset to any invalidated or lost FTES. Invalid or lost FTES not offset by unfunded FTES shall result in a negative revenue adjustment in the fiscal year in which the audit, Chancellor's review, or district declaration is resolved. ~~the district replaced the lost average daily attendance or FTES with average daily attendance or FTES which is fundable but would not otherwise be funded. Notwithstanding any other provision of law, the funding for the replacement average daily attendance or FTES shall not exceed that used to reduce the district's revenue following the audit or declaration of discrepancy.~~

(c) Any positive adjustment to a district's apportionments resulting from the implementation of this section shall not affect prior year apportionments to other districts.

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

Comment: Details are added to address the resolution of minor and inadvertent errors in attendance accounting and reporting.

66. Section 59118 of subchapter 3 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59118. Limitations on Adjustments.

(a) The district shall be held harmless against any Chancellor review or investigation, or any regular or special audit citing not resolved as provided in Section 59112, within five years of the time when the final report of the review or investigation, or the citing is first presented to the governing board. Until five years has passed after the presentation of the final report of the review or investigation or the audit citing has passed, the district shall retain all primary and support documentation which might need to be reviewed by the Chancellor to verify any district claim for State support.

(b) The five-year period described in subdivision (a) does not apply where the Chancellor finds deliberate district misrepresentations in connection with claims for state or federal funding.

Note: Authority cited: Sections 66700, 70901, 71020.5, 84040 and 84500, Education Code. Reference: Sections 76220 and 84040, Education Code.

Comment: The time limitation should apply to both audit citings and to Chancellor reviews or investigations. Districts should not enjoy the limitation where intentional misrepresentations are found.

67. Section 59257 of article 2 of subchapter 4.5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59257. Implementing Regulations.

Each district governing board wishing to establish an auxiliary organization must adopt implementing regulations, and submit such regulations to the Chancellor for approval. The implementing regulations must contain provisions which address at least the following subjects:

(a) Provisions which set forth the district's method for recognizing an auxiliary organization, which procedure must include a public hearing prior to such recognition;

(b) Provisions which limit authorized auxiliary organizations to those performing recognized functions described in section 59259;

(c) Provisions which implement section ~~72672-72674~~ of the Education Code, regarding composition and meetings of boards of directors of auxiliary organizations;

(d) Provisions which implement subdivision (a) of section 72672 of the Education Code, regarding the audit of auxiliary organizations;

(e) Provisions which implement subdivision (c) of section 72672 of Education Code, regarding salaries, working conditions, and benefits for full-time employees of auxiliary organizations;

(f) Provisions which implement section 72675 of the Education Code, regarding expenditures and fund appropriations by auxiliary organizations; In implementing

subdivision (b)(2) of section 72675, the district regulations may specify different standards for different types of auxiliary organizations.

(g) Provisions which establish recordkeeping responsibilities of auxiliary organizations;

(h) Provisions which establish a procedure for periodic review of each auxiliary organization by the district to insure that it is complying with sections 72670-72682 of the Education Code, district implementing regulations, any written agreement with the district, and its articles of incorporation or bylaws; and

(i) Provisions which prohibit the district from transferring any of its funds or resources other than funds or resources derived from gifts or bequests, to any of its auxiliary organizations, when the purpose of such transfer is either to avoid laws or regulations which constrain community college districts or to provide the district with an unfair advantage with respect to the application of any state funding mechanism. Such state funding mechanisms include, but are not limited to, general apportionment funding, capital outlay funding, Extended Opportunity Programs and Services funding, and funding for programs and services for handicapped students with disabilities.

(j) Provisions which shall specify the following:

(1) The function or functions which the auxiliary organization is to manage, operate or administer;

(2) A statement of the reasons for administration of the functions by the auxiliary organization instead of by the college under usual district procedures;

(3) The areas of authority and responsibility of the auxiliary organization and the college;

(4) The facilities to be made available, if any, by the district to permit the auxiliary organization to perform the functions specified in the implementing regulations or written agreement;

(5) The charge or rental to be paid to the district by the auxiliary organization for any district facilities used in connection with the performance of its function. The charge or rental specified shall not require involved methods of computation, and should be identified in sufficient time before its incurrence so that the auxiliary organization may determine to what extent it shall be liable therefor;

(6) Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization. No more than 50% of the reimbursement by an auxiliary organization may be made in the form of non-monetary benefits that the auxiliary organization provides to a community college district, such as increased community awareness or other such benefits that are agreed upon by district officials and the auxiliary organization. Such non-monetary benefits shall be assigned a good-faith reimbursement value by the district. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable;

(7) A simple and stable method of determining in advance to what extent the auxiliary organization shall be liable for indirect costs relating to federally-sponsored programs;

(8) The responsibility for maintenance and payment of operating expenses;

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(9) The proposed expenditures for public relations or other purposes which would serve to augment district appropriations for operation of the college. With respect to expenditures for public relations or other purposes which would serve to augment district appropriation for the college, the auxiliary organization may expend funds in such amount and for such purposes as are approved by the board of directors of the auxiliary organization. The governing board shall name a designee who shall file with the governing board a statement of auxiliary organizations' policies on accumulation and use of public relations funds. The statement will include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control;

(10) The disposition to be made of net earnings derived from the operation of facilities owned or leased by the auxiliary organization and provisions for reserves;

(11) The disposition to be made of net assets on cessation of the operations under the agreement; and

(12) Provisions which require a covenant of the auxiliary organization to maintain its existence throughout the period of the agreement and to operate in accordance with sections 72670-72682 of the Education Code, and with the regulations contained in this subchapter as well as district implementing regulations.

In addressing the requirements of this subdivision in its district implementing regulations, a district may provide for such requirements in a written agreement or agreements with an auxiliary organization. The agreement shall provide for all requirements of this subdivision which have not been addressed in the district implementing regulations. Notwithstanding subdivision (e) of section 59255, if the requirements of this subdivision are provided for in the written agreement rather than the district's implementing regulations, the auxiliary organization may not be recognized by the district until the agreement is submitted to the Chancellor for approval.

Note: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code.

Comment: A recent California Attorney General opinion confirmed that some level of reimbursement for district services provided to an auxiliary organization can be non-monetary. The additional language in (j)(6) requires that some reimbursement be monetary (at least 50%) and that a good-faith value must be assigned to non-monetary reimbursement. The intent of the addition is to provide accountability when district employees spend part of their worktime doing work for auxiliary organizations. The addition to the final paragraph ensures that Chancellor's Office approval is secured whether a district includes the provisions of the section in its implementing regulations or in written agreements with auxiliary organizations. A typographical error is corrected.

68. Section 59270 of article 3 of subchapter 4.5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59270. Procedures for Annual Audits and Financial Reporting.

The Chancellor shall ~~have the authority to~~ prescribe the reporting and auditing procedures for auxiliary organizations. ~~Such procedures are contained in the document, *California Community Colleges Auxiliary Organization Accounting and Reporting System*, which shall be maintained by the Chancellor.~~ Districts and auxiliary organizations shall apply and comply with the provisions of this document such procedures.

Note: Authority cited: Sections 66700, 70901, and 72672, -72675, Education Code. Reference: ~~Sections 72672 and 72675~~ Article 6 (commencing with section 72670), chapter 6, part 45, Education Code.

Comment: Staffing limitations have prevented the updating of the referenced procedures, so that reference is removed. The System Office's fiscal unit can notify districts when the procedures are revised. Reference provisions are coordinated.

69. Section 59272 of article 3 of subchapter 4.5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59272. Review of District Implementing Regulations.

The Chancellor shall review and approve or disapprove district implementing regulations no later than 60 days after receipt. Implementing regulations which satisfactorily address the minimum contents specified in section 59257 shall be approved. Implementing regulations which are disapproved shall be returned with a statement of reasons as to why they were rejected. Regulations that have not been disapproved by the Chancellor within 60 days of receipt shall be deemed to be approved until such time as the Chancellor notifies the district that a provision of the implementing regulations must be revised and a statement of the reason for the revision.

Note: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: ~~Section 72672~~ Article 6 (commencing with section 72670), chapter 6, part 45, Education Code.

Comment: Staffing limitations often prevent a review of submitted regulations within the 60-day period. The amendment allows districts to presume that approval has been given so that they may proceed after the passage of 60 days if they are not notified of disapproval. If the System Office review ultimately indicates that a problem exists, the Chancellor can then notify the district indicating what revision is needed. Legal references are standardized.

70. Section 59300 of article 1 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59300. Purpose.

The purpose of this subchapter is to implement the provisions of California Government Code sections 11135 through 11139.5, the Sex Equity in Education Act (Ed. Code § 66250 et seq.), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12100 et seq.) and the Age Discrimination Act (42 U.S.C. § 6101), to the end that no person in the State of California shall, in whole or in part, on the basis of ethnic group identification, national origin, religion, age, sex, race, color, ancestry, sexual orientation, or physical or mental disability, or on the basis of these perceived characteristics or based on association with a person or group with one or more of these actual or perceived characteristics, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is administered by, funded directly by, or that receives any financial assistance from, the Chancellor or Board of Governors of the California Community Colleges.

Note: Authority cited: Sections 66271.1, 66700, and 70901, Education Code; and Section 11138, Government Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135-11139.5, Government Code; ~~Section 66250 et seq., Education Code; Sections 422.6 and 422.55, Penal Code;~~ title 20, United States Codes; ~~Section 1681;~~ title 29, United States Code; ~~Section 794;~~ and title 42, United States Code; ~~Sections 2000d, 6101 and 12100, et seq.~~

Comment: Recent revisions to state nondiscrimination laws confirm that a person's actual or perceived status are protected as is an association with those having actual or perceived characteristics. Added note sections require the adoption of regulations or are sections the regulation implements.

71. Section 59303 of article 1 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 59303. Delegation of Authority.~~

~~The Board of Governors hereby delegates responsibility for implementing and enforcing the requirements of Government Code sections 11135 through 11137 to the Chancellor of the California Community Colleges, except as specifically stated in this subchapter.~~

~~Note: Authority cited: Section 11138, Government Code; and Sections 70901 and 71090, Education Code. Reference: Sections 11135 and 11138, Government Code.~~

Comment: Board Standing Orders already direct the Chancellor to implement and enforce the Government Code sections; this regulation is unnecessary. ("The Chancellor shall implement and enforce the requirements of Government Code sections 11135-11137, consistent with Board regulations." Standing Order 384.)

72. Section 59311 of article 2 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59311. Definitions.

For purposes of this subchapter, the following definitions shall apply:

(a) "Appeal" means a request by a complainant made in writing to a community college district governing board pursuant to section 59338 and/or to the Chancellor's Office pursuant to section 59339 to review the administrative determination of a community college district regarding a complaint of discrimination.

(b) "Complaint" means a written and signed statement meeting the requirements of section 59328 that alleges unlawful discrimination in violation of this subchapter.

(c) "Days" means calendar days.

(d) Except for purposes of section 59306, "disability" means any mental or physical disability as defined in Government Code section 12926.

(e) "Discrimination on the basis of sex" means sexual harassment or discrimination on the basis of gender.

(f) "Gender" includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(g) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Sections 11135 and 11138, Government Code; and Sections 66250 et seq. and 70901, and 12926, Education Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135 and 11138-12926, Government Code; and Sections 66250 et seq., Education Code-Sections 422.6 and 422.55, Penal Code.

Comment: Prohibited discrimination is defined, in part, in Education Code section 66270, which in turn incorporates "hate crime" definitions that appear in the Penal Code. The Penal Code was amended, effective January 1, 2005, to include the added definitions. Other added note sections require the adoption of regulations or are sections the regulation implements.

73. Section 59320 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59320. District Responsibility.

Each community college district has primary responsibility to insure that its programs and activities are available to all persons without regard to their actual or

perceived ethnic group identification, national origin, religion, age, race, sex, color, sexual orientation, ancestry, or physical or mental disability or to their association with a person or group with one or more of these actual or perceived characteristics. Therefore, each community college district shall investigate complaints of unlawful discrimination in its programs or activities, and seek to resolve those complaints in accordance with the provisions of this subchapter.

Note: Authority cited: Sections 66271.7, 66700 and 70901, Education Code; and Section 11138, Government Code; and Section 66250, Education Code. Reference: Sections 66250 et seq. and 72011, Education Code; Sections 11135 and 11138, Government Code; and Sections 422.6 and 422.55, Penal Code.

Comment: The added concepts of a perceived characteristic and association with protected persons coordinate the section with revisions to state law. The added note sections require the adoption of regulations or are sections the regulation implements; the removed note sections are not proper authority or reference provisions.

74. Section 59339 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59339. Appeal to Chancellor.

(a) In any case not involving employment discrimination, the complainant shall have the right to file a written appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. Such appeals shall be processed pursuant to the provisions of article 4 (commencing with section 59350) of this subchapter. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty-five (45) days from that date.

(b) In any case involving employment discrimination, the complainant may, at any time before or after the final district decision is rendered, file a complaint with the Department of Fair Employment and Housing (DFEH) where the complaint is within the jurisdiction of that agency. ~~In addition, in such cases, the complainant may file an appeal with the Chancellor within thirty (30) days from the date that the governing board issues the final district decision or permits the administrative determination to become final pursuant to section 59338. The appeal must be accompanied by a copy of the decision of the governing board or evidence showing the date on which the complainant filed an appeal with the governing board and a statement under penalty of perjury that no response was received from the governing board within forty five (45) days from that date. The Chancellor shall have discretion to accept or reject any such appeal in employment discrimination cases. If the Chancellor agrees to accept the appeal, he/she may:~~

- ~~(1) attempt to informally resolve the matter pursuant to section 59354;~~

~~(2) where applicable, treat the complaint as an allegation that the district has violated the provisions of subchapter 1 (commencing with section 53000) of chapter 4 of this division; or~~

~~(3) take any other action deemed appropriate by the Chancellor.~~

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 66250 et seq., 72011, Education Code; and Sections 11135, and 11136 and 11138, Government Code.

Comment: Employees with discrimination complaints have recourse through the federal Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing, and employment appeals through this office may potentially conflict with or duplicate those processes. The acceptance of employee appeals is currently optional for the System Office but the lack of staffing resources precludes the ability to effectively process employment appeals. Districts must still provide for employee complaints, but employee appeals to the System Office are eliminated. The additional note sections require the adoption of regulations or are sections the regulation implements.

75. Section 59342 of article 3 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59342. Extensions; Failure to Comply.

(a) If a district, for reasons beyond its control, is unable to comply with the 90-day or 150-day deadline specified in sections 59336 or 59340 ~~for submission of materials to the Chancellor,~~ the district may file a written request that the Chancellor grant an extension of the deadline. The request shall be submitted no later than ten (10) days prior to the expiration of the deadline established pursuant to sections 59336 or 59340 and shall set forth the reasons for the request and the date by which the district expects to be able to submit the required materials.

(b) A copy of the request for an extension shall be sent to the complainant, who shall be notified that he or she may file written objections with the Chancellor within five (5) days of receipt.

(c) The Chancellor may grant the request unless delay would be prejudicial to the investigation. If the Chancellor grants an extension of the 90-day deadline, the 150-day deadline is automatically extended by an equal amount.

(d) If a district fails to comply with the requirements of sections 59336 or 59340 by the required deadline, including any extension granted pursuant to this section, the Chancellor may proceed to review the case as provided in article 4 (commencing with section 59350) of ~~the this~~ subchapter based on the original complaint and any other relevant information then available.

Note: Authority cited: Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 11135; and 11136 ~~and~~ 11138, Government Code.

Comment: The revision clarifies that a district extension affects the submission of information to the Chancellor and to the complainant. Typographical errors are corrected.

76. Section 59356 of article 4 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59356. Formal Resolution.

Within 120 days of initiating the investigation, the Chancellor shall take one of the following actions:

(a) Notify the district and the complainant that there is probable cause to believe the district has violated the provisions of this subchapter. The Chancellor shall allow the district to acquiesce in this finding prior to filing an accusation against the district.

(b) Notify the district and the complainant that there is no probable cause to believe the district has violated the provisions of this subchapter.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 66250 et seq. and 72011, Education Code; and Sections 11135; and 11136 and 11138, Government Code.

Comment: Grammatical clarification is added. The added note sections require the adoption of regulations or are provisions that the regulation implements.

77. Section 59360 of article 4 of subchapter 5 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59360. Enforcement.

(a) Upon a determination that a district has violated the provisions of this subchapter, the Chancellor shall notify the district of the action he or she will take to effect compliance. The Chancellor may use any means authorized by law to effect compliance, including:

(1) Withhold all or part of the district's state support, including state general apportionment and/or growth funding;

(2) Make ~~probationary~~ eligibility for future state support, including state general apportionment and/or growth funding, and/or eligibility for grants or contracts administered by the Chancellor's Office, conditional on compliance with specified conditions;

(3) Proceeding in a court of competent jurisdiction for an appropriate order compelling compliance.

(b) No decision to curtail state funding to a district pursuant to this section shall be made until the Chancellor has determined that compliance cannot be secured by voluntary means.

Note: Authority cited: Sections 66271.1, 66700 and 70901, Education Code; Section 11138, Government Code; and Section 70901, Education Code. Reference: Sections 66250 et seq., and 72011, Education Code; and Sections 11135, 11136 and 4413811137, Government Code.

Comment: The term "probationary" is unnecessary since eligibility is already conditioned on compliance. The scope of state support that is potentially at issue is confirmed. The added note sections require the adoption of regulations or are provisions that the regulation implements.

78. Section 59402 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59402. Definitions.

For the purposes of this Ssubchapter the following definitions apply:

(a) "Instructional and other materials" means any tangible personal property which is owned or primarily controlled by an individual student.

(b) "Required instructional and other materials" means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which is necessary to achieve those required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(c) "Solely or exclusively available from the district" means that the material is not available except through the district, or that the district requires that the material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district's actual cost and:

(1) the material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or

(2) the material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) "Required instructional and other materials which are of continuing value outside of the classroom setting" are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during class hours.

(e) "Tangible personal property" includes electronic data that the student may access during the class and store for personal use after the class in a manner comparable to the use available during the class.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

Comment: Numerous options for use of electronic data are now available, and some of them allow students to preserve access beyond the class. The definition of "tangible personal property" is added to verify that such data may be considered instructional materials so long as the student has the ability to use the materials after the class in a manner comparable to the student's ability to use the materials during the class.

79. Section 59404 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this ~~§~~subchapter, which specify the conditions under which such materials will be required.

(b) The policies or regulations specified in ~~Subsection-subdivision~~ (a) shall be adopted no later than January 1, 1986, forwarded to the Chancellor's Office upon adoption, and thereafter published in each college catalog developed after the date of adoption.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

Comment: The adoption date for district policies is no longer relevant, so it should be removed. There is no need for districts to file their policies or regulations with the System Office. If a state review of a district's policies or regulations is needed, those items can be secured.

80. The heading of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

~~Subchapter 9. Minority, Women, and Disabled Veteran Business Enterprise Participation Goals for~~Nondiscrimination in Public Works Contracting in the California Community Colleges

81. Section 59500 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59500. Scope of Subchapter.

(a) ~~The California Community Colleges Board of Governors confirms that contracting opportunities shall not be denied because of discrimination and shall provide encourage broad opportunities for the participation of business enterprises, including minority, women, and disabled veteran business enterprise participation in the award of district contracts consistent with this §subchapter. The statewide goal for such participation is not less than 15 percent minority business enterprise participation, not less than 5 percent women business enterprise participation, and not less than 3 percent disabled veteran business enterprise participation of the dollar amount expended by all districts each year for contracts for construction, public works, professional services, materials, supplies, equipment, alternation alteration, repair, or improvement. However, each district shall have flexibility to determine whether or not to seek participation by minority, women, and disabled veteran business enterprises how to provide inclusive opportunities for any given contract.~~

(b) As part of their efforts to ensure nondiscrimination in their public works contracting programs, districts may collect data concerning the participation of contractors, including minority business enterprises, women business enterprises, and disabled veteran business enterprises in the award of district contracts to verify that artificial barriers to participation on the basis of race, gender, or disability do not exist.

(c) Nothing in this §subchapter authorizes any district to discriminate in awarding contracts on the basis of ethnic group identification, ancestry, religion, age, sex, race, color, or physical or mental disabilityany characteristic protected from discrimination under subchapter 5, commencing with section 59300.

(d) Nothing in this subchapter shall be construed to conflict with or be inconsistent with the provisions of article 1, section 31 of the California Constitution or to authorize conduct that is in conflict with or is inconsistent with such provisions.

Note: Authority cited: Sections 66700; and 70901 and 71028, Education Code; and Section 11138, Government Code. Reference: Sections 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code 11135 and 11139.8, Government Code.

Comment: The referenced provisions of the Public Contract Code that established participation goals have been declared unconstitutional. The revisions focus on confirming the prohibition to improper discrimination or preference in awarding public works contracts. Because a district's public works program are already subject to subchapter 5 that prohibits discrimination, a separate comprehensive regulatory structure is not needed. The subchapter still addresses the collection of data regarding the participation of groups in public works projects. Such data collection is allowable and may provide important information about potential barriers to full opportunity of participation. The replacement of the list of groups protected from discrimination with a reference to discrimination protections of subchapter 59300 (Board nondiscrimination

regulations) will coordinate the regulations and eliminate the need to update this section should the basic nondiscrimination provisions be amended in the future.

82. Section 59502 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59502. Definitions.

~~The following definitions set forth in Subsections (d), (e), and (f) of Section 10115.1 of the Public Contract Code, as they may be amended from time to time, apply to this Subchapter and are incorporated herein as though fully set forth in addition, for purposes of this Subchapter~~data collection:

(a) “Certification” means a process to identify the status of minority, women, and disabled veteran business enterprises and of other contractors or potential contractors.

(b) “Contract” includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a public works contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the district. The term “contract” does not include payments to utility companies or purchases, leases or services secured through other public agencies and corporations, the Department of General Services, or the federal government pursuant to Public Contract Code sections 20652 and 20653 and Education Code ~~§~~section 81653;

(c) “Contractor” means any person or persons, regardless of ~~ethnic group~~ identification, ~~ancestry, religion, sex, race, or color,~~ or any firm, partnership, corporation, or combination thereof, any characteristic protected from discrimination under subchapter 5, commencing with section 59300, whether or not a minority business enterprise, women business enterprise, and/or disabled veteran business enterprise, who enters into a contract with a district.

(d) “Disabled veteran business enterprise” means a business enterprise certified as a disabled veteran business enterprise by the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services pursuant to Military and Veterans Code, section 999, or a business enterprise that certifies that it has met such standards.

(~~e~~) “District” means any community college district, board of trustees or officer, employee, or agent of such a district or board empowered to enter into contracts on behalf of the district.

(~~e~~) “MBE/WBE/DVBE” means a minority business enterprise, a women business enterprise, and/or a disabled veteran business enterprise. Although a business enterprise may qualify under multiple categories, the entry shall be designated in one specific category for the purposes of these regulations.

(~~f~~) “Goal” means a numerically expressed objective for systemwide ~~MBE/WBE/DVBE participation that districts are expected to contribute to achieving.~~ Goals are not quotas, set asides, or rigid proportions.

(~~g~~) “Disabled veteran business enterprise” means a business enterprise certified as a disabled veteran business enterprise by the Office of Small and Minority Business, pursuant to Military and Veterans Code Section 999, or a business enterprise that certifies

~~that it has met such standards.~~ “Minority business enterprise” means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more minority, or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority.

(2) A business whose management and daily operations are controlled by one or more minority who own the business.

(3) A business concern with its home office located in the United States that is not a branch or subsidiary or a foreign corporation, firm, or other business.

(h) “Women business enterprise” means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more women, or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more women.

(2) A business whose management and daily operations are controlled by one or more women who own the business.

(3) A business concern with its home office located in the United States that is not a branch or subsidiary or a foreign corporation, firm, or other business.

Note: Authority cited: Sections 66700, and 70901 ~~and 71028~~, Education Code; and Section 11138, Government Code. Reference: Sections 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code 11135 and 11139.8, Government Code.

Comment: Districts may continue to monitor their contracting programs to ensure that they are free from improper discrimination. Collecting data on the use of MBE/WBE/DVBE in district contracts is allowable and a step in confirming that equal opportunity is a reality. The definitions of “minority business enterprise” and “women business enterprise” need to be added to Board regulations since the referenced Public Contract Code has been successfully challenged as unconstitutional. Required participation goals for minority and women business enterprises are not allowable, so related definitions and references in this subchapter must be revised.

83. Section 59504 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59504. Efforts by Districts.

Each district shall undertake appropriate efforts to provide participation opportunities ~~for minority, women, and disabled veteran business enterprises in district contracts~~ without regard to race, gender or disability or other discriminatory bases defined in section 59300. Appropriate efforts may include vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of this Ssubchapter, developing a listing of ~~minority,~~

~~women, and disabled veteran business enterprises MBE/WBE/DVBE and other persons or enterprises that are potentially available as contractors or suppliers, or such other activities they that may assist interested parties in being considered for participation in district contracts. Districts shall also undertake efforts to contribute to achievement of the systemwide goals established in Section 59500 by seeking minority, women, and disabled veteran business enterprises as contractors for such contracts as the district may deem appropriate pursuant to Section 59505.~~

Note: Authority cited: Sections 66700, and 70901 ~~and 71028~~, Education Code. Reference: Sections 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code 11135 and 11139.8, Government Code.

Comment: Districts should be inclusive in their efforts to promote contractor participation in district contracts. Districts should be particularly vigilant in ensuring that contractors are not excluded from opportunities for participation on the basis of race, gender, or disability.

84. Section 59505 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59505. Application of Monitoring Participation Goals.

~~(a) If a district elects to apply MBE/WBE/DVBE goals to any contract which is to be awarded to the lowest responsible bidder, bidding notices shall include a statement that at the time of bid opening, bidders shall be considered responsive only if they document to the satisfaction of the district that they meet or have made a good faith effort to meet minority, women, and disabled veteran business enterprise participation goals.~~

~~(b) A responsive bidder documents a good faith effort to meet the participation goals if, in connection with the submission of a bid, the bidder provides evidence satisfactory to the district that efforts were made to seek out and consider minority, women, and disabled veteran business enterprises as potential subcontractors, materials and/or equipment suppliers, or both subcontractors and/or suppliers.~~

~~(c) The district may also elect to seek minority, women, and disabled veteran business enterprises to serve as contractors for any other contracts not covered by subsection(a).~~

~~(d) The Each district shall may maintain a certification process that allows it to assess the status of each of its contractors and, if the contractor is a certified or self-certified minority, women, and disabled veteran business enterprise subcontractors and/or suppliers to the satisfaction of the district, the district may include the actual dollar amount attributable to minority, women, and disabled veteran business enterprise MBE/WBE/DVBE participation and to non-MBE/WBE/DVBE enterprises in reporting its participation activity pursuant to Section 59509 contracts described in this subchapter. Should the monitoring program indicate that disparities exist in the amount of dollars awarded through district contracts than would be expected in a contracting program that~~

provides equal opportunity for participation, the district should assess the circumstances that may contribute to the disparity and implement methods that foster equal opportunity.

Note: Authority cited: Sections 66700; and 70901 and 71028, Education Code. Reference: Sections 71028, Education Code; Article 1.5, Chapter 1, part 1, Public Contract Code 11135 and 11139.8, Government Code.

Comment: District data-keeping efforts can monitor whether underrepresentation in district contracting exists on the basis of race, gender, or disability. If so, efforts should be implemented to remove artificial barriers to participation.

85. Section 59506 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 59506. Certification.~~

~~(a) Each district shall establish a process to collect and retain certification information provided by a business enterprise claiming minority, women, and disabled veteran business enterprise status.~~

~~(b) The process described in subsection (a) shall include notification to responsive bidders subject to Section 59505(a) of the requirements for qualification as a responsive bidder.~~

Note: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code.

Comment: The certification process that allows districts to monitor contractor participation is described in section 59505, so this section is unnecessary.

86. Section 59508 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59508. Enforcement of Contracts and Severability Provision.

~~(a) Notwithstanding any other provision of this Subchapter, the participation goals established herein shall not affect the validity or enforceability of any contract or any bonds, notes or other obligations issued by the district to provide for the payment of any contract subject to this Subchapter.~~

~~(b) If any provision of this Subchapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the Subchapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Subchapter are severable.~~

Note: Authority cited: Sections 66700, and 70901 and 71028, Education Code. Reference: Sections 71028, Education Code; Article 1.5, Chapter 1, Part 1, Public Contract Code 11135 and 11139.8, Government Code.

Comment: Because the participation goals described in (a) are not appropriate, that subdivision is removed.

87. Section 59509 of subchapter 9 of chapter 10 of division 6 of title 5 of the California Code of Regulations is repealed:

~~§ 59509. Monitoring of Participation Goals.~~

~~Each district shall monitor its participation as specified in this subchapter.~~

~~Note: Authority cited: Sections 66700, 70901 and 71028, Education Code. Reference: Section 71028, Education Code.~~

Comment: Districts should continue to monitor for possible discrimination in their public works contracting programs, but this is required elsewhere in the subchapter.

DECLARATION OF ELECTRONIC SERVICE

Case Name: **Coast Community College District, et al. v. Commission on State Mandates, et al. (California Supreme Court)**

No.: **S262663**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On November 12, 2020, I electronically served all parties in the case, as well as the Clerk of Court of the California Court of Appeal, with the attached **REQUEST FOR JUDICIAL NOTICE** by transmitting a true copy via this Court's TrueFiling system.

I also served the Clerk of Court of the Superior Court of California by U.S. Mail at the following address: Clerk of Court, Attn: Department 54, Superior Court of California, County of Sacramento, Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, CA 95814.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 12, 2020, at San Francisco, California.

Samuel T. Harbourt
Declarant

/s/ Samuel T. Harbourt
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **COAST COMMUNITY COLLEGE DISTRICT v. COMMISSION ON STATE MANDATES (DEPARTMENT OF FINANCE)**

Case Number: **S262663**

Lower Court Case Number: **C080349**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **samuel.harbourt@doj.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REQUEST FOR JUDICIAL NOTICE	Coast Community College District v Commission on State Mandates - RJN
PROOF OF SERVICE	POS.RJN.CCC v.Comm'n on State Mandates - Nov 12 2020

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/12/2020

Date

/s/Samuel Harbourt

Signature

Harbourt, Samuel (313719)

Last Name, First Name (PNum)

California Department of Justice

Law Firm