

**Scenarios to Illustrate Effective Participation
in District and College Governance**

**A Joint Publication of the Community College League of California and the Academic Senate
for California Community Colleges
(Updated 2020)**

The following scenarios represent situations that raise issues regarding the respective roles of key players in community college governance. This document primarily addresses the relationships among the academic senate, administrators, and the board of trustees but also demonstrates how these groups should work constructively with students, classified staff, and faculty unions to ensure collegial governance of the institution. The purpose of these scenarios is to provide concrete applications of the recommendations in "Participating Effectively in District and College Governance," also a joint publication of the Community College League and the Academic Senate.

The format of this presentation is to state the scenario and then provide the following analysis: Statement of the issue, citation of the pertinent sections of Title 5 or Education Code, and a suggested process recommended to resolve the situation. The suggested processes are specifically focused on the role of the leadership of the academic senate, administration, and board. The process section is in most cases followed by a description of a suggested approach that might help to avoid the problems that arise in the scenario. The scenarios also include references to appropriate questions and answers in "Participating Effectively."

The scenarios are primarily organized around the areas of responsibility of the academic senate, with a few additional categories related to other issues in effective college governance.

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Introduction

These scenarios are intended to illustrate situations that can develop when colleges engage in collegial governance. They do not cover all possibilities that can arise. CCLC and the ASCCC do not propose that you sort through these scenarios to find one similar to your problem and then use the answer as your solution. Each situation at any given college is unique and calls for its own approach. The approaches suggested in these scenarios should be viewed as interpretive notes and possible models. They are not intended as legal opinions. Very definitely, the responses indicated here are not to be construed as limiting a college or district's choices of action. In particular, a college may have developed local agreements that are effective and appropriate but that differ significantly from the responses given here. Such agreements may be quite appropriate given the strong influence of local college culture on the evolution of collegial governance mechanisms.

The recommended approaches are based on a typical college situation. They assume that board policies on effective participation in governance are in place. These scenarios are intended to encourage all participants to work within the system, act cooperatively and responsibly, know and seek to follow the law, and be focused on meeting student needs. The CEO of a multi-campus district is referred to as "chancellor," and the CEO of a college, either in a single or multi-campus district, is called simply "president." Under most circumstances, the board designee is the chancellor for district matters and the president for college matters. Academic senate structure is based on a representative council model rather than a senate of the whole. Faculty are presumed to be represented by an exclusive bargaining agent. The scenarios also assume that a committee structure is in place in which all representatives are appointed by their constituency groups. The committees referenced may be either college committees or senate committees depending on the situation.

When appropriate, the scenario will specify whether the mode of collegial consultation is mutual agreement or primary reliance. The steps recommended to approach each situation typically begin by calling for communication between the college president and the senate president. The process usually goes on to state what the outcome of this discussion should be. The term "should" is used in the sense of good practice, not as a mandate. In some cases, the process described in the scenario stops here. In real life situations, resolution might not be reached through this discussion, and further action may be needed. Common follow up steps are included in some scenarios, and, of course, can be generalized to other situations. For example, the local academic senate and other interested parties always have the right to take an issue to the governing board. Throughout, the scenarios recognize that the local board of trustees, as well as the CEO as agent of the board, has not only the responsibility to act in good faith but also the ultimate authority to make the final decision within the scope of law and regulation. Also, as mentioned in question 39 in "Participating Effectively," technical assistance can be requested from the Academic Senate and the League, and legal remedies are in some cases available as well.

Curriculum

Scenario 1 For some time, the residents of a remote section of the district have sought instruction in certain specific programs via distance education. Several faculty members from these programs who have an interest in distance education have been provided by the Vice President of Instruction with support to convert several existing courses to an

online format. Without proper review or approval, several sections of existing courses are offered the next semester via distance education.

Issue: The issue is the process for approval of courses, including those taught in a distance education format.

Citation: California Education Code §70902(b)(2) states, “The [district] governing board shall establish policies for, and approve, individual courses that are offered in approved educational programs without referral to the board of governors.” Approval of curriculum thus falls under the purview of local boards. However, policies and procedures regarding curriculum are an academic and professional matter under Title 5 §53200(c)(1), and effective instructor-student contact in distance education courses is an academic and professional matter under Title 5 §55204 (a). Title 5 §55206 states, “If any portion of the instruction in a new or existing course is to be provided through distance education, an addendum to the official course outline of record shall be required.” Such an addendum must be reviewed and approved by the curriculum committee.

Process: All curriculum decisions must follow established processes as developed in consultation with the local academic senate and approved by the local governing board in order to ensure that all decisions comply with Education Code and Title 5 Regulations. The academic senate president should confer with the chair of the curriculum committee regarding the procedure for review and approval of addendums for distance education courses and determination of effective instructor-student contact. They should then meet jointly with the Vice President of Instruction to go over the proper process and criteria. The vice president and the academic senate president should immediately meet with the curriculum committee, with the instructors involved also present, to determine whether to withdraw the distance education course sections until the proper approval process has been followed or let the scheduled sections be offered and then follow the process before any such courses are offered again.

Suggestion: Clear and effective policies and processes must be in place for the review and approval of all curriculum, including courses and sections offered in distance education mode. Regardless of who takes the initiative to encourage faculty to develop distance education courses, the changes must go to the curriculum committee following policies and processes developed through collegial consultation with the academic senate. See “Participating Effectively” questions 14, 15, 36, 38, and 39.

Scenario 2 The college’s history department has decided to modify the writing prerequisites for several of its courses and has taken the proposal to the college curriculum committee, where the change has been approved. The English department faculty are unhappy with the change and protest to the academic senate, stating that the senate, with the final authority over curriculum, should overturn and prevent the change before it is presented to the governing board.

Issue: The issue is whether final authority for curriculum recommendations rests with academic senate or with the curriculum committee.

Citation: Education Code §70901(b)(1)(E) guarantees “the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.” In addition, Title 5 §53200(c) lists the areas of academic and

professional matters on which districts must consult with academic senates, and curriculum is number one on the list. These citations of law and regulation would seem to put the authority for curriculum directly under the academic senate. However, Title 5 §55002(a) reads as follows: “A degree-applicable credit course is a course which has been designated as appropriate to the associate degree in accordance with the requirements of section 55062, 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.” Similar language is included in Title 5 §55002(b) and (c) for non-degree-applicable credit courses and for noncredit courses.

Process: Academic senates generally operate at the policy and oversight level regarding curriculum, not at the operational level. Therefore, one could properly argue that the senate has oversight over curriculum but leaves the details and implementation to the curriculum committee. For example, the senate could rightly claim purview over decisions regarding any changes to the structure or membership of the curriculum committee. However, the situation in this scenario is at an operational or implementation level. If the English faculty were to argue that proper processes had not been followed in making this change, then the senate would be justified in investigating the claim about process, and if it found the processes had not been followed, then it could ask the curriculum committee to reconsider the question and make certain that proper processes were followed. However, if the curriculum committee has followed the approved process, the senate should generally trust in the committee’s judgement rather than micro-managing.

Suggestion: If the question is whether the academic senate has the final authority on individual matters of curriculum implementation and operation, the answer is arguably that yes, it does, since Education Code supersedes Title 5 and Education Code gives the senate primary responsibility for curriculum recommendations. However, if the academic senate micromanages the curriculum committee in that way, the curriculum committee will lose all credibility and few faculty will want to serve on it. A wise senate will trust its committees and respect their work. The curriculum committee should be trained to make curriculum decisions, while the senate often is not. Overruling the curriculum committee on a matter such as the one in this scenario would at the least be very bad practice by the senate and could ultimately cause considerable damage to the relationships between and credibility of both bodies. See “Participating Effectively” questions 19 and 32.

Scenario 3 In order to meet budget constraints, the college president has proposed that the reassigned time for the curriculum chair be reduced by half. The description of the curriculum committee in the college curriculum handbook, as mutually agreed upon by the academic senate and the president, call for the faculty curriculum chair to be appointed by the academic senate with a stated amount of reassigned time. The academic senate objects to the change in reassigned time and has found no qualified faculty member who is willing to do the job for the reduced amount of reassigned time. With no faculty appointee coming forth from the academic senate, the college president appoints an administrator to chair the curriculum committee.

Issue: The issues are who has the authority for the establishment and structure of the

curriculum committee and whether or not reassigned time for faculty performing duties such as chair of the curriculum committee is subject to collegial consultation.

Citation: Title 5 §55002(a)(1) states, “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.” The structure of the committee had been previously established by mutual agreement, and the committee so established must remain as originally comprised until such time as changes are mutually agreed upon by the academic senate and the college president.

Reassigned time for faculty performing duties under the purview of the academic senate is usually determined by written agreement between the college and the academic senate, although reassigned time is not an academic and professional matter. Reassigned time may also be negotiated and spelled out in the faculty bargaining agreement.

Process: The college president should work with the academic senate to explain the rationale for reducing the reassigned time of the committee chair. A good faith discussion must take place with the academic senate regarding the rationale and an effort to reach mutual agreement on the change. If good faith efforts on the part of both the president and the academic senate do not produce results, a mutual request should be made for technical assistance from the Community College League and the Academic Senate. Note that the regulation cited is not part of the sections of Title 5 having to do with collegial consultation; thus, the college president may not act independently by invoking the “legal liability” or “substantial fiscal hardship” clauses of §55203(d)(2). If technical assistance does not resolve the matter, the academic senate has legal recourse both in the form of complaints to the Chancellor’s Office on violations of Title 5 and to the courts on the violation of the written agreement for reassigned time.

Suggestion: Processes for changing existing agreements should be clearly stated in writing. In most cases, past practice is honored when a continuing good relationship exists between the academic senate and the college president. However, in absence of a good written agreement, the senate would have little legal basis for insisting on the reassigned time. In this case, when the college president saw the need for dealing with financial problems by reassessing the use of faculty reassigned time, a mechanism should have been in place for dealing with the proposal. If the agreement had been in the union contract, that process would clearly be negotiation. When the agreement is a written understanding between the academic senate and the administration, both parties must build into the agreement a mechanism for resolving differences, such as use of an impartial mediator. Further good practice might include the college administration, the academic senate, and in some cases the bargaining unit engaging in an overall analysis and discussion of all reassigned time on campus in order to ensure that reassigned time is allocated appropriately in terms of college needs, effective management of assignments, and fiscal considerations. See “Participating Effectively” questions 17 and 21.

Scenario 4 After the passage of legislation dealing with student assessment and placement, the

CCC Chancellor's Office and the Academic Senate for California Community Colleges issue a guidance document with recommendations for implementing the new law. The division dean over the college's mathematics department believes that the college should follow the guidance in the document to the letter and announces that the math department should immediately adapt its placement process and curriculum per that guidance, including the elimination of two entire levels of remedial math courses. The math department faculty approach the academic senate for assistance, stating that the guidance goes too far for their local student population and that they are being pressured into curriculum and placement changes that they feel may harm students.

Issue: The issue is the degree to which guidance from the state level should dictate local decision-making.

Citation: California Education Code §70902(A)(1) states, "Every community college district shall be under the control of a board of trustees, which is referred to herein as the 'governing board.' The governing board of each community college district shall establish, maintain, operate, and govern one or more community colleges in accordance with law. In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established." Local boards must ensure that their decisions are consistent with state law and Title 5 Regulations, but as long as the board acts within those parameters, the board is authorized to make decisions for the district. Guidance documents issued by the Chancellor's Office or the Academic Senate for California Community Colleges should be considered seriously as good practice and thoughtful interpretations of law and regulations, but such guidance should not be taken as a mandate.

Process: In this scenario, the college should carefully consider the recommendations in the guidance document but should do so through the lens of the college's own data, needs, and goals. No changes should be made to the curriculum until such analysis has occurred, and final decisions to adopt or adapt the recommendations should be based on the college's own data and conclusions within the parameters mandated by law. In addition, whatever decision the college makes regarding initial implementation of the recommendations, effects and outcomes should be monitored on an ongoing basis, and changes should be made to the implementation as necessary to serve student needs.

Suggestion: Most advisories or guiding documents from the Chancellor's Office indicate clearly when they are directly citing statute or regulations and when they are making recommendations. While these recommendations may well be useful and should be considered carefully, each district has its own local needs, student populations, and communities to serve and therefore must make its own final decisions while acting within the law. Periodically, directives are issued by the Chancellor's Office that may conform to Education Code and Title 5 but that bypass local planning processes and local goals and objectives. Colleges should always consider communications from the Chancellor's Office or from any non-legislative and non-regulatory body in the local context and make all final decisions in ways that conform to the law but also best meet local needs.

Scenario 5 One of the district’s governing board members recently attended a conference and saw a presentation on open educational resources. The board member came back enthused with this concept and has asked the college president to find ways to increase the college’s use of such materials. The president explains that the college already has an OER initiative and that faculty are being educated about OER opportunities and encouraged to adopt such materials where appropriate. The board member states that encouragement of faculty is not sufficient because making materials affordable for students is too important and presses the president to pursue a plan to mandate the use of such materials and present it to the board for approval.

Issue: The issue is the governing board members’ role in making and implementing curriculum decisions.

Citation: California Education Code §70902(A)(1) states, “Every community college district shall be under the control of a board of trustees. . . the governing board may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which community college districts are established.” Final decision-making authority for the district thus clearly rests with the governing board. However, Education Code §70901(b)(1)(E) guarantees “the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.” Title 5 §53200(c) lists the areas of academic and professional matters on which districts must consult with academic senates before making decisions, and curriculum is the first item on that list. Choice and adoption of instructional materials is an integral aspect of curriculum design and delivery and is therefore subject to consultation with the academic senate.

Process: The college president should continue the college’s efforts to educate faculty regarding the possibilities of open educational resources and may even encourage faculty to consider such materials as appropriate. The board member is entitled to request a report or even periodic reports on the college’s status in regard to the adoption of OER materials. However, no program to encourage the adoption of any instructional materials should be implemented without consultation with the academic senate, and no action should be taken by the board or the administration to mandate the adoption of such materials.

Suggestion: Governing board members should rightly be interested in and concerned with curricular programs that benefit students and may be updated on the progress or status of such programs through reports in writing or at board meetings. Members are well within their rights to ask questions about and make observations and suggestions regarding such programs. However, in decisions regarding curriculum development, boards should trust in and rely on consultation with the academic senate and the judgement of the college’s curriculum committee, and boards and administrators should respect the expertise of discipline faculty regarding the delivery of that curriculum. See “Participating Effectively” questions 2, 3, and 37.

Degree and Certificate Requirements

Scenario 6 The governing board of a district with several colleges, each with its own academic senate in addition to a district academic senate, has adopted a collegial consultation policy that specifies that it will rely primarily on the advice and judgment of the

academic senate on all academic and professional matters. Each college has its own catalog separately approved by the board. One college has proposed a local, non-transfer associate degree requirement in information competency for its graduates. The proposal was developed following the agreed-upon collegial consultation process at the college. The academic senate at one of the other colleges in the district objects to the proposal and has brought the matter to the district academic senate. The concerned college senate claims that degree requirements are a district matter and should be recommended by the district academic senate, not the college academic senate.

Issue: The issue is whether degree requirements are a matter for consultation at the district or college level.

Citation: Title 5 §53203(a) says, “The governing board of a community college district shall adopt policies for the appropriate delegation of authority and responsibility to its college and/or district academic senate.” In this case, the board has delegated authority to the college and district academic senates. The question in this scenario is whether the issue of degree requirements is under the jurisdiction of the college or district. Title 5 §55806 states, “The governing board of a community college district shall confer the degree of Associate in Arts or Associate in 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. 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) . . . at least 12 semester or 18 quarter units must be completed in residence at the college granting the degree.” Thus, considering that degrees are granted by the college and, in this case, the board has no stated degree requirements that apply to all colleges in the district, consultation should occur with the college academic senate.

Process: In this case, the district academic senate should cite the above regulation and inform the concerned college academic senate that the other college is within its rights to propose a change to the college graduation requirements. Final authority for approving such a change rests with the board of trustees. In deliberating on the proposed change, the board should consider factors such as uniformity of requirements for students who may move from one college to another within the district. The board may choose to specify degree requirements that would apply to all colleges in the district.

Suggestion: Each matter that may arise within a multi-college district should be clearly identified as a college or district issue and dealt with appropriately. No district can anticipate all possible issues, and thus good practice would specify a forum at which this determination can be made. In multi-college districts, either a district academic senate or meetings of college senate leaders should serve as that forum. Potential matters of conflict between colleges should be identified and resolved as early as possible. See “Participating Effectively” questions 18 and 23.

Grading Policies

Scenario 7 Following a recommendation of the local academic senate’s Educational Policies Committee, which consists of faculty representatives from each of the college divisions, the senate has passed a resolution calling for the local governing board to establish plus/minus grading. Grading policies are a “rely primarily” issue in the district. The item is placed on the board agenda, and at the board meeting the associated

students president objects on the grounds that students did not participate in the development of the recommendation. The governing board pulls the item from the agenda and asks the academic senate and the associated students to work together on the proposal.

Issue: The issues are the responsibilities of the governing board to rely primarily on the advice and judgment of the academic senate on academic and professional matters and to ensure the effective participation of students on matters that affect them.

Citation: Title 5 §51023.7(a)(2) states, “Except in unforeseeable, emergency situations, the governing board shall not take action on a matter having a significant effect on students until it has provided students with an opportunity to participate in the formation of the policy or procedure or the joint development of recommendations regarding the action.” Title 5 §51023.7(b)(1) identifies “grading policies” as a matter with significant effect on students. Thus, the governing board must not act on the grading proposal until students have had the opportunity to participate in its development.

Process: The academic senate and the associated students organization should confer on a process through which the academic senate can retain its primary recommending authority while allowing students significant input on the nature of the proposal.

Suggestion: Proposals on matters of concern to different groups should be shared in an appropriate venue early in their developmental stages. The college should have a process in place to handle issue management. By sharing the desire to develop such a policy, the academic senate could identify the concerns of students and build their involvement into the proposal process. All parties—the academic senate, the CEO, and the administration, as well as the board of trustees—are responsible for ensuring that students and staff participate effectively in the development of recommendations on matters that affect them. In matters involving student evaluation and success, all parties should also work to ensure that equity issues are given appropriate attention and consideration. See “Participating Effectively” questions 16, 18, 21, 28, 29, and 30.

Educational Program Development

Scenario 8 A new occupational program is being considered, one which is unrelated to any existing program at the college. The college does not currently employ any faculty in the discipline covering the new program, either full-time or part-time. Developing a job announcement through the Office of Instruction and using the Dean of Occupational Education and the Director of Community Services as the screening committee, the president is set to recommend to the governing board the hiring of two part-time faculty to develop the curriculum for the new program. This method of developing a job announcement and screening candidates does not follow the existing hiring policy.

Issue: The issues here are the responsibility and process for educational program development, including occupational programs, and the requirement to follow established hiring practices.

Citation: Title 5 §55000(m) defines an educational program as “an organized sequence of courses leading to a defined objective, a degree, a certificate, a diploma, a license, or transfer to another institution of higher education.” Title 5 §53200(c)(4) identifies educational program development as an academic and professional matter. Furthermore, Education Code §87360(b) requires that “hiring criteria, policies, and

procedures for new faculty members shall be developed and agreed upon jointly by the representatives of the governing board and the academic senate, and approved by the governing board.”

Process: Educational programs must be developed through established processes and, according to the *Program and Course Approval Handbook* approved by the Board of Governors through Title 5 §55000.5, “All associate degrees and certificates of achievement that appear by name on a student transcript or diploma must be chaptered by the Chancellor’s Office.” Approval of occupational programs involves additional requirements including labor market analysis and information as well as advisory committee and regional consortia recommendations. The new program under consideration must go through the appropriate steps of the process before the program can be created and approved. Furthermore, while the purview of the college president includes identifying the need for additional faculty, existing hiring procedures must be followed. The college president and the academic senate president should meet, evaluate the proper steps to follow in the college hiring process, and go over the steps to be followed in developing a new program. These steps should include evaluation of the need for additional faculty, full-time or part-time, to develop and teach the program. The college president should not advance the new program to the board until these matters are settled.

Suggestion: Although a need for this new program may very well exist, the college president should have followed established procedures. For example, the curriculum committee may be charged with discussion of new programs. That committee, following policies and procedures derived through collegial consultation between the district and the academic senate, would then make a proposal regarding the potential new program, including the possibility of hiring new faculty. Specifically in regard to career technical education programs, the college might create a committee to consider new proposals by analyzing labor marker information and demand, explore possible funding sources for such programs, and address other CTE campus and regional issues that would impact college programs. The proposal for new faculty would typically be considered through a collegial consultation process such as a committee charged with making staffing recommendations. Once the need for the new program and staff are established, the hiring process can begin. See “Participating Effectively” questions 16, 17, and 21.

Scenario 9 The college has developed a dual enrollment agreement with a local high school district. Courses that are currently approved for the college curriculum will be offered at the high school. High school teachers who meet community college minimum qualifications will be employed as adjunct faculty to teach the classes. The academic senate protests that this agreement is a new program and is therefore subject to collegial consultation with the academic senate and that the employment of high school faculty violates the college’s hiring process.

Issue: The issues are whether dual enrollment agreements constitute new educational programs and the hiring process and qualifications for faculty who teach under such agreements.

Citation: Education Code §48800 sets out criteria and requirements to authorize high school students “to attend a community college during any session or term as special part-

time or full-time students and to undertake one or more courses of instruction offered at the community college level.” California provides dual enrollment opportunities through multiple avenues including College and Career Pathways Partnerships as defined in Education Code §76004. In addition, Education Code §87359 states, “The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors.” Thus, matters involving minimum qualifications, including those for faculty teaching courses with dual enrollment students, fall directly under academic senate purview.

Process: Dual enrollment agreements, including College and Career Pathways Partnerships, allow high school students to enroll in existing college courses; they do not create new educational programs for such students as long as the curriculum is not modified. Thus, the establishment of dual enrollment agreements does not fall directly under academic senate purview and is not subject to collegial consultation. The academic senate may have a role in ensuring that course outlines are followed and standards are upheld as well as addressing any issues that might impact existing programs or courses, but the creation and approval of the dual enrollment agreement is not subject to academic senate agreement. Faculty who teach under dual enrollment agreements should be hired by following the college’s existing hiring processes and must meet the same minimum qualifications as all other community college faculty. As long as the high school teachers in this scenario meet minimum qualifications for the disciplines in question, they may be hired through the college’s usual processes.

Suggestion: While the creation and approval of dual enrollment agreements, including College and Career Pathways Partnerships, do not require consultation with the academic senate, good practice might involve discussion with the senate to identify and address any issues that might impact existing courses and programs. In addition, consultation with the faculty bargaining unit should ensure that any re-hire or seniority rights for part-time faculty are respected. See “Participating Effectively” questions 21 and 34.

Student Preparation and Success

Scenario 10 The college’s student equity coordinator needs the signature of the academic senate president on the Student Equity Plan the day before the plan is due. The academic senate president has not seen the plan before being asked for a signature and therefore has had no opportunity to review it or to discuss it with the senate or even with the senate officers. The academic senate president refuses to sign.

Issue: The issues are the responsibility for required documents such as the Student Equity Plan and the meaning of the academic senate president’s signature on plans or reports to the Chancellor’s Office.

Citation: Title 5 §53200(c)(5) indicates, “standards or policies regarding student preparation and success” as an academic and professional matter. Education Code §78220 states that

Student Equity Plans “shall be developed with the active involvement of all groups on campus as required by law, including, but not limited to, the academic senate, academic faculty and staff, student services, and students, and with the involvement of appropriate people from the community.” The Student Equity Plan is a requirement for Student Equity and Achievement Program funding under Education Code §78222. The academic senate president’s signature does not indicate approval in this case but rather that faculty have been consulted appropriately in the plan’s development.

Process: The academic senate president should work with the student equity coordinator to request a time extension from the Chancellor’s Office. The college’s student equity and achievement committee or other appropriate body should review the plan and make a recommendation to the academic senate. The academic senate should then review the plan and, when assured that consultation has been achieved, the academic senate president should sign the report. As the applicable Title 5 language is not a part of §53200(c) regarding academic and professional matters, “consultation” in this context means the opportunity to provide commentary on the draft report that is considered meaningfully and in good faith when the final report is prepared. Academic senate presidents should always be conscious of exactly what their signature means on a specific document, whether to indicate approval, that consultation has taken place, or simply that the senate has been informed. In this scenario, the meaning of the signature is to attest that all local consultation has occurred, not to approve the contents of the report.

Suggestion: The Student Equity Plan should be reviewed annually by the college’s student equity and achievement committee or other appropriate body and any changes developed in consultation with the academic senate. The plan submitted to the Chancellor’s Office should be reviewed by all appropriate college constituencies. Academic senate representatives involved with the plan should make regular reports to the senate and receive direction from the senate on needed changes. In this manner, academic senate representatives can be regularly involved in consultation on student equity efforts and the local senate can authorize the senate president’s signature on the plan with confidence. In addition, the academic senate, the college administration, and other constituencies could work together to create a year-long calendar with deadlines for reports and signatures indicated well in advance in order to minimize all such conflicts as much as possible. See “Participating Effectively” questions 16, 17, 21, and 24.

Scenario 11 In response to the success portion of the Student Centered Funding Formula, the college’s Vice President of Student Services announces the implementation of a new text-messaging service that is intended to remind students to register on time and to apply for degrees and certificates when they have fulfilled requirements. The counseling department protests to the academic senate that course registration and degree application processes are academic and professional matters and that the new service should not be implemented until the counseling department has reviewed and approved the messaging.

Issue: The issues are the definition of “standards or policies regarding student preparation and success” as an academic professional matter and, more broadly, the need for consultation on changes made to accommodate the Student Centered Funding Formula.

Citation: Title 5 §53200(c)(5) indicates “standards or policies regarding student preparation and

success” as an academic and professional matter. The language specifically indicates standards and policies, not operational or implementation activities.

Process: Registration and degree application processes are certainly developed to promote student success, and thus policies and in some cases processes in these areas would fall under academic and professional matters. However, if the new system does no more than notify students and send reminders, it is not impacting standards or policies. It is therefore not subject to consultation with the academic senate. In a broader view, a college might take a variety of steps to maximize its allocation under the Student Centered Funding Formula, ranging from implementing reminders such as the one described in this scenario to simplifying paperwork to creating new degrees or certificates. If the changes impact curriculum development or delivery, alter standards, or impact policies that involve student success, they fall under the academic senate’s purview and are thus subject to collegial consultation before implementation. If the changes are simply operational and do not change curriculum, standards, or policies, consultation is not required.

Suggestion: Even when consultation with the academic senate is not required, good practice would involve requesting senate input whenever possible. In the scenario above, for example, while consultation may not be a requirement, counselors might well have useful suggestions regarding the phrasing or timing of the messaging. Such a request for input does not imply a mandate to reach agreement but rather a desire to make the best possible use of the knowledge of all concerned parties. See “Participating Effectively” questions 16, 19, and 21.

Faculty Roles in District and College Governance Structures

Scenario 12 The college administration met over the summer to discuss college reorganization. When faculty returned in the fall, they were presented with a draft plan that merged discipline departments into new divisions. The merged division offices were to be separated into two locations. In one location would be the classified staff and the faculty mailboxes, and in the other location would be the offices of the division deans. The stated purposes of the draft plan were to enable student services and instruction to work together in an integrated fashion, commingle faculty from the general education and occupational education disciplines, and balance the workload of the division deans.

Issue: The issue is the extent to which this plan constitutes a change in the faculty roles in governance and possibly other academic and professional matters or just a reordering of the administrative organizational chart and new physical location of staff, as well as the process for college decision making during summer or winter breaks.

Citation: Title 5 §53200(c)(6) lists district and college governance structures, as related to faculty roles, as an academic and professional matter. Education Code 70902(b)(4) gives the governing board the power to “Employ and assign all personnel not inconsistent with the minimum standards adopted by the board of governors.” Paragraph (d) of that section allows “delegating the power to the district’s chief executive officer or any other employee or committee as the governing board may designate.” The question thus comes down to determining whether the proposal alters the governance role of faculty or just reorganizes divisions under the rights of assignment that the governing board has delegated to the CEO.

1. If the governance structure is based on faculty representation by division, then the academic senate has the right to collegial consultation regarding how the reorganization will affect that representation. For example, if the composition of the Budget Advisory Committee specifies one faculty member from each division and the reorganization reduces the number of divisions from eight to four, then obviously adjustments in the governance agreement regarding faculty representation on the committee are needed. The change might also alter the development and review of curriculum and educational programs, especially if such processes are based on a divisional structure of related disciplines.
2. If the planned reorganization does not change the governance role of faculty or impact any related academic and professional matter, collegial consultation is not required by Title 5 regulations, and the district or college is not required to reach mutual agreement with or primarily rely on the academic senate. However, Education Code 70902(b)(7) requires governing boards “to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, to ensure that these opinions are given every reasonable consideration. . . .” Even if the reorganization does not affect academic and professional matters, all constituencies must be given the chance to comment on the reorganization and to have their input considered in the plan.

Process: The academic senate should approach the CEO with the faculty’s concerns. If faculty roles are changed or other academic and professional matters are altered, the CEO must allow for collegial consultation with the academic senate before moving ahead. If academic and professional matters are not impacted, the reorganization may proceed. However, the CEO must allow for review of the plan and give reasonable consideration to opinions received.

An additional issue in this scenario is the development of the reorganization plan during summer and the announcement at the beginning of fall. Although many faculty are not on campus during summer and academic senates often do not meet between primary spring and fall terms, colleges cannot cease to operate during such periods. However, requirements for collegial consultation regarding academic and professional matters also are not suspended during summer. College administration should take into consideration the availability of faculty outside of primary terms and should reserve major decisions for periods in which faculty leadership is present on campus. At the same time, academic senates should develop processes to allow for consultation as needed outside of primary terms. In this scenario, if the planned reorganization does not change the governance role of faculty or impact any related academic and professional matter, the administration might have at least notified the leadership of faculty and other concerned constituencies of the proposed plan and allowed for input into the plan’s development during summer or, if the issues that led to the changes do not require immediate remedy, waited until the fall semester to finalize the plan with appropriate input. If the proposed reorganization does require consultation with the academic senate, then the administration should contact the senate to arrange for appropriate consultation and, if the changes are not urgent, should consider postponing

the process of finalizing the plan until the fall semester.

Suggestion: The desire for reorganization was undoubtedly motivated by some perceived problems with the present structure. The college administration can express its leadership by calling together campus representatives to discuss and analyze organizational problems perceived by the administration. Once difficulties have been recognized and defined, a full range of possible solutions can be explored and evaluated. If these solutions affect faculty roles in governance or other academic and professional matters, appropriate consultation with the academic senate must be sought. With that essential input, the administration can then proceed with implementation of the best of the results. In addition, academic senates should make provisions in their bylaws or processes for consultation when necessary outside of primary academic terms. Such provisions might involve authorizing the senate president to make decisions without the usual approval of the full senate, perhaps in consultation with other senate officers, or the possibility of calling emergency senate meetings outside of primary terms. See “Participating Effectively” questions 8, 9, and 24.

Scenario 13 The district chancellor is excited about advances in distance education and creates a new district committee charged with developing and implementing procedures on technology-mediated instruction. The chancellor then decides that the committee should include four representatives from each constituency group and asks the academic senate president to appoint four faculty members. The academic senate president asks for collegial consultation on the formation of the committee, including the charge, membership, and reporting responsibilities.

Issue: The issue is whether or not the formation of this committee on technology-mediated instruction is an academic and professional matter.

Citation: Chancellor’s Office Legal Opinion M 97-20 states, “some degree of consultation will be required if the purpose of the committee is to develop policy or procedures related to an academic and professional matter.” Title 5 §53200(c)(1) lists curriculum as an academic and professional matter, and technology-mediated instruction is certainly a curriculum issue. Thus, the chancellor must consult with the academic senate on the particulars of this committee.

Process: The academic senate president should discuss the matter with the chancellor, present the above citations, and request that the chancellor consult with the academic senate before proceeding with the formation of the committee.

Suggestion: When either party, the administration or the academic senate, considers the possibility for the formation of a college-wide group to discuss policies or procedures related to academic and professional matters, the two should consult before proceeding, preferably at the conceptual stage. If a new group is formed, a written agreement should be reached on the charge, membership, and reporting responsibilities of the group. See “Participating Effectively” questions 17, 21 and 22.

Faculty Roles in Accreditation

Scenario 14 Two colleges are preparing for accreditation. At both colleges, the academic senate appoints the faculty co-chair of the accreditation steering committee, as is specified in existing procedures. At the first college, the college president rejects the appointment and names a faculty member of the president’s own choosing. At the second college,

the college president has concerns about the appointment and approaches the academic senate to express those reasons, but the academic senate refuses to discuss the matter.

Issue: The issue here is the authority to make faculty appointments to groups dealing with academic and professional matters.

Citation: Title 5 §53203(f) states, “The appointment of faculty members to serve on college or district committees, task forces, or other groups dealing with academic and professional matters, shall be made, after consultation with the chief executive officer or his or her designee, by the academic senate.” The authority to make the appointment lies with the academic senate, and the appropriate role of the college president is one of consultation.

Process: At the first college, the academic senate president should approach the college president, cite the above regulation, and require the withdrawal of the president’s appointment. The academic senate should make the appointment, but only after consulting with the college president regarding potential appointees and considering in good faith any concerns the president may have.

At the second college, the college president should approach the academic senate president, cite the above regulation, and require consultation with the academic senate. The academic senate president should place the item on the academic senate meeting agenda and make a good faith effort to address the concerns of the college president. After that consultation, the academic senate should either confirm the appointment or make another selection if the president’s concerns are found to have merit.

Suggestion: All parties should be familiar with and should follow written procedures adopted by the college. Disagreements should be settled amicably, and modifications should be made regularly following processes written into the agreement so that decision-making procedures remain relevant and effective. In the scenarios above, if the college president disagrees with the process or the person selected by the senate, the first step should be for the president to consult with the senate either on possible modifications to the process or a change of the person to be appointed. The academic senate should recognize reasonable concerns broached by the college president and be responsive to needed changes. See “Participating Effectively” questions 21 and 22.

Scenario 15 After the accreditation steering committee finalizes the self-study report, the college president revises a section to remove comments with which the president disagrees.

Issue: The issues are faculty roles in accreditation and the requirements of institutional participation in the accreditation process.

Citation: Title 5 §53200(c)(7) includes among academic and professional matters “Faculty roles and involvement in accreditation processes, including self study and annual reports.” Section 3.1 of the *Guide to Institutional Self-Evaluation, Improvement, and Peer Review* of the Accrediting Commission for Community and Junior Colleges (January 2020 Edition) states, “Accreditation works best if an institution views the accreditation review process as internal continuous quality improvement and an opportunity to receive important validation of sound institutional practices as well as helpful advice from members of peer institutions. . . . The CEO’s approach to accreditation will set the tone for the institution as it proceeds. The campus is more likely to engage with the accreditation review if the CEO assures the work for accreditation will be integrated

with other institutional review and planning processes. . . . The CEO should review the Institutional Self-Evaluation Report as it is drafted and help the institution ensure the Report is complete, candid, and honest. The CEO often can help those preparing the Report identify information needed for a holistic institutional self-evaluation.”

Process: While the language quoted above from the Accrediting Commission stresses the importance of the CEO’s role, it also emphasizes the importance of an honest report and in no way authorizes the CEO to change sections of the report that have been developed through the college’s process. The academic senate president should meet with the college president and request that the original institutional self-study report be submitted as approved by the steering committee. If that request is not honored, the academic senate president should immediately notify the accrediting commission of the violation. The academic senate president should refuse to sign the accreditation self-study and should file a minority report with the accrediting commission containing the original text of the governance standard response. Members of the academic senate should inform the accreditation visiting team of the actions of the college president.

Suggestion: The accreditation steering committee should consist of key leaders of all college constituencies so that problems such as the one the college president evidently had in the above situation may be discussed openly and frankly. Everyone involved should remain dedicated to discussing the problems facing the college in a direct and constructive manner in the self-study. Changes that the group feels need to be made should be referred to within the report and its improvement plans as well as, perhaps, in the quality focus essay. The board of trustees should ensure the integrity of the process and ultimately accept the report as reflective of the current status and plans of the college on each of the accreditation standards. See “Participating Effectively” question 21.

Policies for Faculty Professional Development Activities

Scenario 16 The college’s faculty and staff development committee has approved a particular flex day activity for faculty. A group of faculty object to this activity, have gotten no satisfaction through complaints to the faculty and staff development committee, and now have brought a resolution to the academic senate to stop that particular activity.

Issue: The issue is whether or not individual faculty development activities are subject to collegial consultation with the academic senate.

Citation: Title 5 §53200(c)(8) lists “Policies for faculty professional development activities” as an academic and professional matter. If an action has been taken contrary to policy, then the academic senate is within its rights to seek corrective action. If the faculty development activity and the process by which it was approved do follow adopted policy, then the academic senate may comment, but it holds no authority to require action.

Process: The academic senate should examine the existing policy on faculty and staff development. The senate should communicate with the faculty and staff development committee to ascertain the facts of the case. If the activity or the way it was approved are not in accord with the policy, the academic senate should state so explicitly and take steps to ensure that the staff development committee follows the policy. If no policy violations are evident, the academic senate should consider the merits of the complaint

raised by the faculty. If the senate feels that a problem exists, it should state the substance of the disagreement and request the faculty and staff development committee to reconsider whether or not to offer the activity, but the senate should not attempt to direct the decision of the committee. This example points out that when consulting collegially on policy matters, the academic senate needs to follow explicit standards and procedures and that the senate's authority rests at the policy level rather than in implementation.

Suggestion: In this case, the problem was brought to the attention of the academic senate before any violations occurred and any irreconcilable disputes developed. Note that the academic senate should clearly distinguish its roles of policy or procedure oversight and of mediation between groups having a dispute on an implementation matter. See "Participating Effectively" question 19.

Scenario 17 In restructuring its faculty and staff development program, the college has established an 80% reassigned faculty position for a coordinator. The Vice President of Human Resources announces that an internal search for a coordinator will be done and asks the academic senate to appoint several faculty members to the selection committee. No specific written agreements address the mechanism for selection of faculty coordinators from existing staff. The academic senate president calls for the new coordinator to be appointed by the academic senate.

Issue: The issue is whether the selection of a faculty member for a reassigned-time coordinator position falls under the appointing authority of the academic senate or the right of assignment of the governing board.

Citation: Title 5 §53203(f) grants the academic senate authority to appoint faculty to groups dealing with academic and professional matters, of which faculty professional development certainly is one. Education Code §70902(b)(4) specifies the right of assignment of the governing board. While the academic senate does have the authority to make faculty appointments, this authority does not necessarily include the appointment of faculty to chair a committee or fill a staff position such as coordinator of faculty development. When release time is granted for a chair or coordinator position, the district or college administration frequently retains the right of final appointment through a process that may include the academic senate and other constituent groups as appropriate. If the selection process for coordinators is covered in the bargaining agreement, those particulars must be followed.

Also, when a committee that deals with academic and professional matters is formed, the structure of the committee is subject to collegial consultation. The agreement on the committee structure may specify a selection procedure for the chair, and this procedure might grant selection authority for a faculty chair to the academic senate, but such authority is not a legal requirement.

An exception through which the academic senate may have the authority to appoint a released-time position is the curriculum committee chair, as Title 5 explicitly indicates how the committee is comprised as requiring mutual agreement. See Scenario 3. In addition, per Title 5 §53202, both the membership and the leadership of the academic senate itself are selected by faculty and are not subject to consultation.

Process: Upon hearing of the concerns, the Vice President of Human Resources should meet with the academic senate president, provide the above citation on right of assignment, and seek an appropriate role for the senate in the selection process. While the hiring policy should specify a role for the academic senate in appointing faculty to the selection process, it should also specifically address the method for internal selection of faculty coordinators. Additional items in the policy might include senate roles in creation of the job description and evaluation of the new coordinator. If an agreement is reached, it should be added to the policy on faculty development. Otherwise, the academic senate president should proceed to appoint faculty to the selection committee as requested.

Suggestion: The problem could have been avoided if either the district policy regarding the hiring process or the bargaining agreement contained a method for internal selection of faculty coordinators. In this case, without such an agreement in place, the vice president should have talked to the senate president and invited input by the academic senate. Furthermore, disagreements of this sort can be minimized through regularly scheduled meetings between the academic senate president and the college president as well as with college vice presidents, especially those responsible for instruction and student services, in order to share concerns on college issues and work together to reach agreements. See “Participating Effectively” questions 21 and 22.

Scenario 18 The college has for several years had two separate groups that oversee and coordinate professional development, one for faculty and another for classified staff and administration. The new Vice President of Human Resources sees this structure as inefficient, noting that many professional development activities are equally relevant to all constituent groups. The new vice president therefore announces the intention of combining the two committees under the leadership of a classified administrator who will be responsible for overseeing all professional development at the college. The academic senate objects to this plan, stating that faculty professional development falls under the senate’s purview and that it must therefore be considered and overseen only by faculty separately from other professional development efforts at the college.

Issue: The issue is the academic senate’s role in oversight of faculty professional development.

Citation: Title 5 §53200(c)(8) lists “Policies for faculty professional development activities” as an academic and professional matter. The structure of oversight for professional development is an issue at the policy level and therefore falls under academic senate purview. Title 5 §53203(d) provides the definitions that apply to collegial consultation on academic and professional matters and indicates that districts must either rely primarily on recommendations of the academic senate or must reach mutual agreement with the senate. The definitions further indicate that, even in extreme or compelling circumstances, changes to policy or procedure cannot be implemented until a good faith effort at such consultation with the academic senate has taken place.

Process: Title 5 places “policies for faculty professional development activities” as an academic and professional matter under academic senate purview; it does not indicate that all faculty professional development must be directly overseen and coordinated by the academic senate or by faculty. In this scenario, the vice president should consult with the academic senate, explain the reasons for wishing to combine the committees, and

work to reach agreement on an acceptable structure. The academic senate should ensure that faculty retain an appropriate voice in oversight and development of faculty professional development, but such a voice does not preclude a joint effort with other constituencies. No change should be made to the existing structure until such agreement is reached.

Suggestion: Various structures could exist to achieve an effective overall professional development committee, including a faculty co-chair for the committee and a separate process for approval of activities specific to faculty professional development that allows for greater faculty control. A cooperative structure might be developed to the benefit of all college constituencies while still preserving the academic senate's voice in matters specific to faculty professional development. See "Participating Effectively" questions 14, 15, 16, and 21.

Processes for Program Review

Scenario 19 The college's dean of research and planning is requesting the purchase of a new data management software system for use with the college's program review process. The dean claims that the new system will be more efficient and will facilitate college and department planning. However, the new system does not provide for the collection of all of the data currently included in the college's instructional program reviews and instead asks for various pieces of information not currently included in the process. The academic senate protests the purchase of and conversion to any new system that does not replicate the college's approved program review process.

Issue: The issue is the role of the academic senate in decisions regarding instructional program review.

Citation: Title 5 §53200(c)(9) lists "processes for program review" as an academic and professional matter requiring collegial consultation with the academic senate. If a new software system were simply providing a different way to collect and catalog data, then it would not necessarily be impacting the process for program review and therefore may not be subject to collegial consultation. However, if the implementation of the new system will change the content of the programs reviews, the timelines in which they are submitted, or other aspects of the program review process, then the change to the new software would require consultation with the academic senate.

Process: While technology can often facilitate greater efficiency and effectiveness in program review and other processes, colleges must be certain that the choice and implementation of technology is being shaped by agreed-upon processes and that processes are not being altered simply to accommodate the technology. The academic senate president should contact the dean, cite the above regulation, and request that consultation with the academic senate occur before any purchase of software that would alter the program review process is made. The senate should consider the reasons for the dean's request and whether alterations to the program review process in order to allow for use of the proposed software would be acceptable to the faculty, but it should only agree to the implementation of the new software if it feels confident that a program review process agreed to by the senate, whether previously established or revised for the current situation, is being honored. If the dean is resistant to this consultation or to delaying the purchase, the senate president should make the college president aware that required consultation has not occurred and request assistance in

resolving the issue.

Suggestion: Even though the implementation of new software that does not impact the process or content of program review would not be subject to collegial consultation, seeking input from those who would be using the new software would in any case be good practice. Consideration of any proposed purchase or implementation of new technology can benefit from input from the intended users, whether faculty, staff, or others, even if that input is not in the form of formal consultation or approval. See “Participating Effectively” questions 7, 16, and 19.

Processes for Institutional Planning and Budget Development

Scenario 20 At last year’s governing board retreat on strategic planning, the board talked about the need to respond to a community outcry for more technology related courses. The board members were not certain of how to respond to the demands because of fiscal problems within the district. Based on discussions at board meetings over several months, the board decided to lease some land owned by the district to generate funds for technology. The governing board has placed approval of the lease agreement on the next agenda as well as a discussion of how the money is to be used. The academic senate has raised concerns about the plan several times and now has passed a resolution objecting to the terms of the lease and demanding a role in determining how any such funds might be used.

Issue: The issue is whether or not the terms of a lease agreement involving district property and the process for determining the use of special funds are subject to collegial consultation.

Citation: Education Code §70902(b)(6) gives the governing board the right to “manage and control district property.” Therefore, the terms of the lease are not subject to collegial consultation. Title 5 §53200(c)(10) lists “processes for institutional planning and budget development” as an academic and professional matter. Thus, the process for determining the use of these funds is subject to the established process for budget development as determined through collegial consultation with the academic senate. Many districts establish a budget committee for such matters. Title 5 requires the Facilities Master Plan to include guidelines or policy for designation of surplus property. Also, Title 5 places restrictions on the use of funds derived from capital assets such as those from the lease of this property.

Process: Although the academic senate does not have the right of collegial consultation regarding the terms of the lease, it may still present its arguments to the college president or district chancellor and, if necessary, to the board. The academic senate should discuss with the chancellor or president the necessity of directing the issue of the funds to the budget committee. If a process is in place for determining the use of such funds, that process should be followed. If not, the budget committee should make a proposal to the academic senate and the chancellor or president regarding a process for determining the recommended use of these funds. The academic senate and the chancellor or president, as the board’s designee, should mutually agree on the process for determining the use of the funds. As always, the final authority for allocating resources lies with the governing board.

Suggestion: Disagreements over this issue should have been resolved early in the discussion. The academic senate president and the chancellor or college president should have met as

soon as questions arose over the lease. If the above recommended process had been initiated at the outset, disagreements might not have grown to the extent that they threatened to disrupt board action on the item. Providing an arena where key campus leaders can gather for such discussions might have facilitated reaching a solution agreeable to all parties. See “Participating Effectively” questions 8 and 18.

Scenario 21 The college’s budget committee is considering a change in its administrative procedures for the budgeting of discretionary funds. The committee is made up of representatives of all constituent groups; however, the majority are faculty appointed by the academic senate. Over the objections of the faculty on the committee, the Vice President of Administrative Services, who serves as the budget committee chair, has sent the procedural change to the college president, who then sent out a letter to the entire college announcing the adoption of the procedural change. The faculty members of the budget committee have come to the academic senate objecting to the process. The governing board policy specifies that the process for budget development is to be mutually agreed upon with the academic senate.

Issue: The issue is the academic senate role in budget process changes.

Citation: Title 5 §53200(c)(10) cites “processes for institutional planning and budget development” as an academic and professional matter. This change in the existing budget development process is a matter for collegial consultation with the academic senate.

Process: The academic senate president should immediately meet with the college president, cite the Title 5 regulation, and request consultation on the budget process change. Further, the college president should notify all college personnel that the change is suspended pending consultation. The academic senate should place the matter on its next agenda. If, after a good faith effort, no agreement can be reached, Title 5 §53203 states that “existing policy shall remain in effect unless continuing with such policy exposes the district to legal liability or causes substantial fiscal hardship.”

Suggestion: The budget committee proposal should have been sent to the academic senate for review and approval. If approved by the senate and the administrative designee of the governing board, the process change becomes effective. If the proposal is not approved by the senate, the board may still institute the change if it can establish that failure to implement the new process would create legal liability or cause fiscal hardship. Disagreements of this sort might be minimized through regularly scheduled meetings between the academic senate president and the college president in order to identify potential college issues and discuss positive resolutions before the issues become more serious. See “Participating Effectively” questions 10, 14, and 15.

Scenario 22 The Vice President of Business Services has proposed that the construction of the new occupational education building be financed through certificates of participation. The building has long been a part of the college master plan developed using a planning process established through consultation with the academic senate. A group of business faculty brings an analysis of the financing proposal to the academic senate, objects to the proposal, and suggests that the academic senate approach the governing board with a different financing plan.

Issue: The issue here is whether or not the financing plan for the construction of a building is

- an academic and professional matter.
- Citation: Title 5 §53200(c)(10) lists “processes for institutional planning and budget development” as an academic and professional matter. This language applies to the procedures by which the budget is developed, not specifics such as financing mechanisms. The same principle generally applies to the selection of vendors, contractors, architects, and other services.
- Process: The academic senate should inform the concerned faculty members that they may directly approach the Vice President of Business Services and, if necessary, the governing board with their analysis. The senate itself may express an opinion on the issue to the vice president or the board if it so chooses, but agreement with the academic senate regarding the financing proposal is not required.
- Suggestion: Comments on matters such as financing plans for buildings or the selection of vendors or contractors should be heard in public forums designed for that purpose. Usually, the academic senate has no formal involvement in the development or review of a matter such as this. See “Participating Effectively” question 10.

Defining Parameters of Collegial Consultation

Scenario 23 As the college engages in the implementation of a new guided pathways framework, the college president announces the formation of an administrative task force that will oversee the development of the framework. The academic senate president approaches the college president and asks that faculty be included with equal representation on the task force, as many of the aspects of guided pathways involve academic and professional matters, and that collegial consultation should take place before reaching any decision involving academic and professional matters. The college president responds that consultation with the academic senate on academic and professional matters is required only at the policy level and that since the task force will not be developing new formal policies, consultation is not a requirement.

Issue: The issue is the level and circumstances for which collegial consultation on academic and professional matters is required, especially but not limited to initiatives mandated by the legislature or promoted by the CCC Chancellor’s Office.

Citation: Title 5 §53203(a) states, “The governing board of a community college district . . . shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters. This requirement to consult collegially shall not limit other rights and responsibilities of the academic senate which are specifically provided in statute or other Board of Governors regulations.” The language in this section specifically identifies both “policies and procedures.” Indeed, while the list of academic and professional matters in Title 5 §53200 specifies the requirement for consultation at the policy level in certain cases—such as “standards or policies regarding student preparation and success” and “policies for faculty professional development activities”—in other cases it specifically references processes—such as “processes for institutional planning and budget development”—and in still others makes no specific reference to the level of consultation and appears to refer to the topic as a whole—such as “curriculum, including establishing prerequisites and placing courses within disciplines.” Furthermore, the concluding language in §53203(a) explicitly does not place limitations on consultation with the academic senate. Often the context of the

issue at hand will determine whether an issue is an academic and professional matter and the point at which consultation should take place. Both administration and faculty must work in good faith to establish reasonable processes that allow the administration to make operational decisions while fully respecting the faculty voice and the academic senate's right to collegial consultation.

Process: While the implementation of an initiative such as guided pathways may impact formal board policy, consultation with the academic senate on academic and professional matters is not limited to the level of policy development. While some aspects of the implementation may indeed be purely organizational and may not be subject to consultation, the development of a framework for any such initiative clearly impacts college planning and may touch on the processes for other academic and professional matters such as budgeting, processes to promote student success, and curriculum, among others. The academic senate president should again approach the college president, cite the specific language of Title 5 that does not limit consultation with the senate to formal policy development, and request that the senate be included in the development and membership of task force that will engage in planning the guided pathways framework.

Suggestion: While consultation with the academic senate in the planning of an initiative like guided pathways or the Student Equity and Achievement Program is mandatory, the success of any such college-wide initiative requires the involvement and dedication of other college constituencies as well. Rather than developing a plan on its own, administration is generally better served by greater inclusion of and transparency to all constituent groups, even when such inclusion is not required. See "Participating Effectively" questions 7, 19, 21, and 34.

Scenario 24 The overall governance structure of the college includes a "college council" with representatives from administration, the academic senate, the faculty union, the classified union, the classified senate, and the associated student organization. This council meets with the college president on a monthly basis. In order to promote greater overall collegiality, the college president announces that all newly developed or revised board policies or administrative procedures will now require the approval of the college council before they can be forwarded to the governing board. The academic senate protests that this requirement is not consistent with the definitions of collegial consultation with the senate under Title 5 regulations.

Issue: The issue is the academic senate's role in governance and right to direct consultation with the board's designee regarding academic and professional matters.

Citation: Title 5 §53203(a) states that local governing boards "shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters." The definition of collegial consultation in Title 5 §53203(d) indicates that the board will either primarily rely on the senate's recommendations or reach mutual agreement with the senate. Both options for collegial consultation under Title 5 require direct communication between the senate and the governing board or its representatives.

Process: While a college council may serve various positive purposes, decisions regarding academic and professional matters must, according to Title 5, be primarily based on consultation with the academic senate, not on equal voices for all constituencies. The

academic senate president should point out the specific language of Title 5 regarding the definition of collegial consultation to the college president and if necessary to the governing board. The senate should then work with the college president to establish a process to ensure that recommendations on policy and procedures regarding academic and professional matters are based on consultation with the senate and are not prevented from being presented to the board by any other college constituency. Recommendations involving academic and professional matters may be presented to the college council for input and dialogue as a part of that process, but the final decision on forwarding the recommendations to the board must depend on consultation with the senate and not on approval from an overall college council.

Suggestion: The college might develop separate processes for consideration of policy and procedures that require collegial consultation with the academic senate and for those that do not. Policy and procedures that do not require direct consultation with the senate may be submitted for consideration and approval by a college council if the president and the board so decide. Those that do require collegial consultation with the senate may appropriately be brought to the college council for input and discussion but not for approval that would prevent submission to the board. See “Participating Effectively” question 18.

Scenario 25 The Vice President of Instruction announces new scheduling guidelines for all courses, including specific time blocks and limitations on when certain types of classes can be offered. The academic senate informs the vice president that course scheduling can impact curriculum decisions and program viability and therefore should be considered an academic and professional matter under Title 5§53200(c)(11), commonly known as the “plus one” category of the regulation, and on this basis requests that the guidelines be subject to collegial consultation. The vice president disagrees, stating that unless curriculum is being developed or revised, course scheduling is an operational matter that does not fall under the academic senate’s purview.

Issue: The issue is how to resolve disagreements regarding the definition of academic and professional matters, especially those that may fall into the “plus one” category.

Citation: The list of academic and professional matters in Title 5 §53200(c) includes “other academic and professional matters as are mutually agreed upon between the governing board and the academic senate.” The regulation provides no further guidance on deciding what these additional matters might be, leaving such determinations up to local decision-making processes.

Process: Both sides might, depending on the circumstances, have legitimate arguments in this case. Scheduling in a general sense is a matter of which classes are offered, when they are held, and how many are offered; it does not change the curriculum or academic standards and might therefore be seen as simply operational. On the other hand, when and which courses are offered can sometimes impact the health of and enrollment in educational programs, which can then touch on academic and professional matters such as planning and other issues. The academic senate president and the college president should meet and determine a fair process to decide whether this issue—and ideally all such issues—will or will not be considered to be subject to collegial consultation. Such a process might involve assigning the issue to another body for discussion, resolving the question through direct analysis by the college president and

the senate president, relying on college precedent, or various other means.

Suggestion: Each district should have an established board policy or administrative procedure that outlines how disagreements regarding the application of the term “academic and professional matters” will be resolved. This policy or procedure should be detailed enough to provide for a clear process and broad enough to cover a wide range of possible issues appropriately. See “Participating Effectively” question 7 and 8.

Scenario 26 The dean of the college’s admissions and records area is interested in establishing a new process for evaluating and approving student transfer credit from other institutions. The dean discusses this issue with the college’s student success committee, with several faculty department chairs who regularly evaluate transfer credit, and with a group of interested counselors and develops a new set of specifications and criteria that all departments will be required to follow in evaluating and approving transfer credit. The academic senate protests that collegial consultation processes were not followed in developing these specifications. The dean responds that the student success committee, the department chairs, and the counselors involved had input and therefore faculty were sufficiently consulted.

Issue: The issue is the definition of and requirements for consultation with the academic senate on behalf of faculty.

Citation: Title 5 §53200(c) lists “standards or policies regarding student preparation and success” as an academic and professional matter. Evaluation and acceptance of transfer credit involves standards for student success and also touches on the integrity of curriculum, which is another area listed under the same Title 5 section. Furthermore, Title 5 §53203(a) states that local governing boards “shall provide that the governing board or its designees will consult collegially with the academic senate when adopting policies and procedures on academic and professional matters.” Importantly, the language in this Title 5 section mandates consultation with the academic senate, not simply with faculty.

Process: Discussion with a committee or with individual faculty, even with those elected to faculty leadership positions like department chairs, is not sufficient to fulfill the requirements of collegial consultation under Title 5. The academic senate can delegate the consultation process to other faculty such as committees or department chairs, but the choice to do so rests with the senate and cannot be forced on the senate. The dean should suspend the new process and engage in appropriate consultation with the academic senate. Until such consultation occurs, no changes to existing policy or processes should be implemented.

Suggestion: New administrators often make mistakes such as the one described in this scenario through misunderstanding of requirements rather than intent to circumvent processes. Local academic senates should work with administrative leadership to ensure that new administrators are educated on Title 5 requirements regarding collegial consultation.

Scenario 27 At a meeting with the academic senate leadership, the college’s new Vice President of Instruction mentions that he is looking forward to attending academic senate meetings and getting to know faculty leaders. The senate president politely indicates that the vice president may come to senate meetings only when invited, that he may have ten minutes to speak, and that he will be expected leave when he is done speaking. The

vice president expresses surprise and notes that academic senate meetings are covered by the Brown Act and are therefore open meetings. The senate leaders acknowledge that they are aware of the Brown Act but respond that the presence of administrators has a chilling effect and prevents open discussion at their meetings. They state that they have therefore established an agreement with previous vice presidents that administrators will not attend senate meetings and that they expect the new vice president to comply with this agreement.

Issue: The issue is whether academic senates can limit attendance at senate meetings under the Brown Act, as well as the degree to which administrators should expect to participate in senate meetings.

Citation: California Government Code §54950 et seq., also known as the Ralph M Brown Act, requires of government bodies that “actions be taken openly and that their deliberations be conducted openly.” Because local academic senates are established by law in Education Code and Title 5 Regulations, and because they serve a regular and ongoing advisory function to elected governing boards and have a fixed meeting schedule, they are considered to be government bodies for the purpose of the law (California Government Code §54952 (b)). In 2004, the court case *Callahan v. Academic Senate of Long Beach College* confirmed that local academic senates are subject to the provisions of the Brown Act. Government bodies can only enter closed session and exclude the public under specific conditions as outlined in Government Code §54954.5. Most of these conditions, such as labor negotiations, do not apply to an academic senate. The opportunity for individuals who are not members of the government body to speak may be allowed for at any point on the agenda, but non-members must be provided an opportunity to comment on agenda items before or during the senate’s deliberation of that item (Government Code §54954.3).

Process: The academic senate cannot prohibit administrators or other guests from attending senate meetings. The vice president and others must be given access to attend and observe any meeting of the senate in its entirety with the exception of closed sessions, which very rarely are legal for an academic senate. The senate cannot exclude anyone from attending simply for reasons such as fear that the audience might inhibit discussion or that the senate wishes for some information to remain confidential. In terms of participation, the only legal obligation of the senate is to allow for public comments by non-members on any item before that item is discussed, and the senate may set reasonable limits on such public comment. However, academic senates can often benefit from including in their deliberations administrators and other guests, such as liaisons from the faculty union or student leadership. Administrators and others can sometimes provide additional information or perspectives that can enhance the conversation and lead to better decisions or positions. The senate has a right to control its own meetings, but, as long as it allows for appropriate public comment, it can also make its own decisions on the degree to which non-members may participate.

Suggestion: Academic senates may wish to write into their own meeting procedures or bylaws the degree to which and circumstances under which non-members of the senate may participate in senate meetings, perhaps specifically noting that such participation, outside of public comment, may occur at the discretion of the senate president. Having such processes established will allow the senate to maintain control of its meetings while also allowing for a broader exchange of ideas and perspectives when such an

exchange may be beneficial.

Minimum Qualifications for Hire

Scenario 28 A proposal has been made by the college administration that counseling aides should begin assisting students in completing educational plans. The counseling faculty have come to the academic senate with a concern that this proposal would ask these aides to do the work of professional counselors.

Issue: The issue here is the duties to which faculty minimum qualifications apply.

Citation: Education Code §87359 states, “The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual faculty member employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors.” Thus, matters involving faculty minimum qualifications fall directly under academic senate purview. Counseling faculty require a master’s degree as minimum qualifications, per Title 5 §53410. The functions of the counseling program are specified in Title 5 §51018(b):

- (1) academic counseling, in which the student is assisted in assessing, planning, and implementing his or her immediate and long-range academic goals;
- (2) career counseling, in which the student is assisted in assessing his or her aptitudes, abilities, and interests, and is advised concerning the current and future employment trends;
- (3) personal counseling, in which the student is assisted with personal, family, or other social concerns, when that assistance is related to the student’s education; and
- (4) coordination with the counseling aspects of other services to students which may exist on the campus, including, but not limited to, those services provided in programs for students with special needs, skills testing programs, financial assistance programs, and job placement services.

Furthermore, local bargaining agreements typically contain a job description of faculty positions including instructor, counselor, and librarian. Items dealing with faculty qualifications are primarily in the realm of the academic senate, while matters dealing with specific job duties are primarily a union responsibility. The academic senate and the faculty union should work cooperatively in addressing the problem stated here.

Process: Academic senate and union representatives should meet jointly with the counseling faculty. Once the facts of the case are clear, both faculty bodies should approach the administration to ensure that the duties of professional counselors are being performed by faculty meeting minimum qualifications. If satisfaction is not obtained, further action should be pursued by the academic senate, such as approaching the governing board regarding minimum qualifications violations and by the union through a grievance filed by the counseling faculty regarding violations of job duties.

Suggestion: Job descriptions of counselors should clearly identify academic counseling such as

development of educational plans as duties of professional counselors. Job descriptions of counseling aides should clearly indicate that duties are limited to such non-counseling activities as helping students with the scheduling of classes already identified in educational plans developed by professional counselors. Any proposed changes in job descriptions should be developed through a structured administrative human resources process and entered into negotiations. In no case should faculty duties be performed by classified employees.

Equivalency to Minimum Qualifications

Scenario 29 The chancellor of a multi-college district has proposed a district-wide equivalency process that includes a district equivalency review committee. This committee would be charged with the final review and recommendation on all equivalency applications for the district. The chancellor wants the committee to consist of representatives of each of the college academic senates, the executive vice president from the affected college, three representatives from the academic department considering the applications, the district staff diversity officer, and the district human resources director. Each of the academic senate presidents maintains that equivalency should remain a college matter, as is currently the policy, and should not be handled at the district level.

Issue: The issue is the authority for determining the equivalence process.

Citation: Education Code §87359(b) states, “The process, as well as criteria and standards by which the governing board reaches its determinations regarding faculty members, shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that each individual employed under the authority granted by the regulations possesses qualifications that are at least equivalent to the applicable minimum qualifications specified in regulations adopted by the board of governors.” Thus, any changes in the equivalency process must be jointly agreed upon by the academic senate and the designee of the governing board. This requirement is a matter of statute, not a Title 5 academic and professional matter that would be subject to independent board action for “exceptional circumstances and compelling reasons” or for “compelling legal, fiscal, or organizational reasons” (Title 5 §53203). The existing process must remain in place until agreement with the academic senate is reached.

Process: The academic senate presidents should notify the chancellor of the requirement for joint agreement and that existing procedures must remain in place until and unless a new agreement is reached. No mention is made in the law regarding whether equivalency recommendations are to be made at the college or district level. Because hiring recommendations are almost always made at the college level, equivalency recommendations are usually also made at the college, not district, level. However, once equivalency has been granted by the board, the faculty member then meets minimum qualifications at any of the colleges in the district. The composition of the equivalency committee must also be jointly agreed upon. In addition, the law requires the board to rely primarily on the academic senate in the determination of the equivalent qualifications of each individual. Thus, equivalency committees usually consist almost entirely of faculty appointed by the academic senate.

Suggestion: The equivalency process should include a mechanism for incorporating changes by mutual agreement. When a given party, such as the chancellor in this case, sees problems that need to be addressed, administrative and senate leaders should meet to analyze and define the problem, consider possible solutions, and seek to reach joint agreement on changes needed to resolve any identified issues. A good practice for avoiding conflicts over such matters would involve regularly scheduled meetings between the academic senate president and the college president, or, in a multi-college district, between faculty leadership and the chancellor in order to identify potential college or district issues and seek positive resolutions.

Hiring Criteria, Policies, and Procedures

Scenario 30 The college president seeks to change the existing faculty hiring process in which the selection committee forwards just one name to the president to advance to the governing board for hiring. The president proposes that the selection committee forward at least three candidates, who would then be interviewed by the president, the appropriate vice president, and the faculty chair of the first round selection committee. The successful candidate would then be advanced to the board by the president. The academic senate reviews the college president's written proposal, without inviting the president to be present, and passes a brief motion that the academic senate is not interested in changing the process. The college president has now approached the academic senate president seeking a resolution of the differences.

Issue: The issue here is the method by which changes to the faculty hiring process are to be made.

Citation: Education Code §87360(b) requires that "hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by the representatives of the governing board and the academic senate, and approved by the governing board."

Process: Under these circumstances, the existing process would stay in place until changes are mutually agreed upon. Further, both sides would be expected to make a good faith effort to reach mutual agreement. In order to make such an effort, the academic senate president should identify senate members to meet with the college president to discuss the proposed change. The proposal should then be thoroughly discussed with the full academic senate, even if no alterations to the president's proposal arise from the committee discussion. As a matter of good practice, the academic senate should invite the college president to be present as a full participant in the senate discussion. If no mutual agreement is reached, the existing process would remain in effect.

Suggestion: The original process should have contained provisions by which changes could be incorporated. Even without such a provision, both the senate and the college president should make a good faith effort to resolve their differences, including the courtesy of inviting the college president to be present when the senate discusses the issue. If differences still remain, the academic senate and the college president can jointly request help through the CCLC-ASCCC Collegiality in Action technical assistance process. Disagreements of this sort might be minimized through regularly scheduled meetings between the academic senate president and the college president in order to identify potential college issues and discuss positive resolutions before the issues become more serious. See "Participating Effectively" questions 21, 33 and 39.

Scenario 31 At an academic senate meeting, the college president makes remarks about wanting all new full-time faculty to be technologically literate, to have fund-raising skills, and to have experience with “lower income learners.” Now job announcements are being sent out with these qualities as “desired qualifications.” The faculty in the disciplines doing the hiring object and take their concerns to the college president, who states that the only way to reconsider the job announcements would be to immediately halt the hiring process. Worried about losing qualified candidates through such a delay, these faculty come to the academic senate seeking resolution.

Issue: The issue here is the responsibility for the hiring process.

Citation: Education Code §87360(b) requires that “hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by the representatives of the governing board and the academic senate, and approved by the governing board.” The hiring process should address the creation and approval of job announcements and would be subject to the involvement of the academic senate in any changes to the process.

Process: If the existing hiring process specifies a method for the creation of the job announcement that has not been followed, the academic senate should take action. The academic senate president should immediately approach the college president and cite the above Education Code section as well as the change from the established college hiring process, thus requiring that an amended job announcement be published as well as mailed to all those who have applied so far. The senate and the college president should consider whether or not the positions must be reannounced.

If the existing hiring process is silent regarding job descriptions, the academic senate president should nevertheless approach the college president and request that the job announcements be withdrawn pending mutual agreement. Furthermore, a group of faculty selected by the academic senate should meet with administrators and add appropriate language to the hiring process. In the meantime, the discipline faculty on hiring committees can ensure that the screening process does not include criteria related to the disputed desired qualifications.

Suggestion: The agreed-upon hiring process should include the process by which job descriptions are developed and modified. All proposed changes to job descriptions, whether proposed by the college president, discipline faculty, human resources professionals, or others, should follow the process.

Late Retirements

Scenario 32 The governing board and the faculty union have negotiated a “golden handshake” retirement package that depends on postponing the hiring of all replacement faculty for one year. The district chancellor has now requested of the district academic senate, as required by Title 5 §53309(i), that it agree with the delay in filling these positions.

Issue: The issue here is the conditions under which the academic senate should agree to extend the replacement hiring period for late retirements beyond the six months that districts may enact independently.

Citation: The text of Title 5 §53309(i) reads as follows:

The FTEF of a faculty member who resigned or retired and who provided

written notice thereof within 45 faculty duty days of the end of the previous Spring primary term and whose position has not been replaced by another full-time instructor by the current Fall primary term, shall be included [in both the total hours of credit instruction taught by full-time and part-time instructors and the total hours of instruction taught by full-time instructors]. The FTEF of replacement faculty, whether full-time or part-time, shall be excluded from the computation to determine the full-time faculty percentage pursuant to section 53308.

Districts are required to fill the position(s) by the following Spring primary term unless designees for the district governing board and academic senate jointly agree that it is in the best interests of the district to delay the filling of the position. In such cases, replacement must be made by the following primary term or the Chancellor shall reduce the district's state apportionment revenues for the current year in accordance with the provisions of Section 51025.

Process: The challenge of this situation is for the academic senate to stay focused on the needs of the academic and student services programs of the college, letting the faculty leadership of the union handle the issues associated with the retirement package. In many situations such as this one, some faculty rehires may be needed immediately to maintain the integrity of affected programs. The academic senate should consider criteria for the determination of which faculty positions would be essential to fill immediately. In many districts, the determination of faculty disciplines for new hires has been added as an additional academic and professional matter determined either through direct input of the academic senate or through delegation of this decision to a college committee containing faculty. Once this set of criteria has been developed, the essential positions can be identified. The academic senate can then agree to the postponement of hiring the remaining positions.

Suggestion: The appropriate process is suggested above.

Administrative Retreat Rights

Scenario 33 The college's extensive international students program, an ambitious student exchange program with a foreign college, has declined precipitously in recent years and has been canceled. The administrator who was hired in 2011 to supervise the program has a doctoral degree in psychology. Through established processes, the college has determined the need to hire a full-time faculty member in psychology and has begun that hiring process. Because of the cancellation of the international students program, the college announces that the administrator formerly in charge of that program has been reassigned as a full-time, probationary faculty member in psychology, thus filling the open position. The faculty in the psychology department protest to the academic senate that the administrator is being forced on them without their participation in the selection and that the college's established hiring process was not followed to fill the position.

Issue: The issue here is administrative retreat rights, including the need to meet minimum qualifications.

Citation: Administrators hired after July 1, 1990 can retreat as first year probationary faculty but

must meet minimum qualifications to do so as specified in Education Code §87458. That section reads as follows:

A person employed in an administrative position that is not part of the classified service, who has not previously acquired tenured status as a faculty member in the same district and who is not under contract in a program or project to perform services conducted under contract with public or private agencies, or in other categorically funded projects of indeterminate duration,, shall have the right to become a first year probationary faculty member once his or her administrative assignment expires or is terminated if all of the following apply:

- (a) The process by which the governing board reaches the determination shall be developed and agreed upon jointly by representatives of the governing board and the academic senate, and approved by the governing board. The agreed upon process shall include reasonable procedures to ensure that the governing board relies primarily upon the advice and judgment of the academic senate to determine that the administrator possesses the minimum qualifications for employment as a faculty member. The process shall further require that the governing board provide the academic senate with an opportunity to present its views to the governing board before the board makes a determination and that the written record of the decision, including the views of the academic senate, shall be available for review pursuant to Section 87358.
- (b) Until a joint agreement is reached pursuant to subdivision (a), the district process in existence on January 1, 1989, shall remain in effect.
- (c) The administrator has completed at least two years of satisfactory service, including any time previously served as a faculty member, in the district.
- (d) The termination of the administrative assignment is for any reason other than dismissal for cause.
- (e) This section shall apply to every educational administrator whose first day of paid service in the district as a faculty member or an administrator is on or after July 1, 1990.

Furthermore, in *Wong v. Ohlone College* (2006), the trial court found that the administrator's right to retreat to a faculty position was not absolute because the college had no open probationary faculty position for which Wong, the administrator, was qualified at the time that his appointment was terminated. The court stated that the college did not have an obligation to "either create or keep open a position to which a terminated administrator could 'retreat' regardless of the college's need for that faculty position or the availability of funds." Thus, the right of an administrator to retreat to a probationary faculty position pursuant to Education Code §87458 applies only if a position for which the administrator meets minimum qualifications is available.

In addition, administrators hired prior to July 1, 1990 who have completed a probationary period are classified as classroom instructors as specified in Education

Code §87458.1. The requirement of meeting minimum qualifications applies only to retreating administrators hired after July 1, 1990.

Process: The college must ensure that the administrator meets minimum qualifications for an open full-time faculty position. In this scenario, since the administrator has an advanced degree in the discipline to which he is retreating, minimum qualifications would be met. If the administrator does not hold an appropriate degree, the academic senate must be consulted to determine whether the administrator meets equivalency for the position. If the administrator is determined to be qualified for the position by meeting listed minimum qualifications or through equivalency, the administrator has the right to fill an open position as a probationary faculty member.

Suggestion: The college should ensure that a clearly defined process and criteria regarding administrative retreat rights are developed and included in district policy or regulations. This process must involve primarily relying on the academic senate in terms of determining whether a retreating administrator meets minimum qualifications or equivalency. Local senates may also need to work with their bargaining units to ensure protections for current full-time and part-time faculty; for example, some institutions specify that a retreating administrator cannot adversely affect the teaching load of a continuing full-time or part-time faculty member.

Placing Items on the Governing Board Agenda

Scenario 34 The district chancellor has developed a “Process to Put Issues Before the Board” policy that has been distributed to all staff. The process states that all issues, regardless of importance or depth, must go through the chancellor for review before being placed on the governing board agenda. If the chancellor feels that the matter is a proper board issue, it will be placed on the board agenda. The academic senate is concerned that issues could arise that the senate would wish to place on the agenda but that would not be agreed to by the chancellor. The senate therefore requests an amendment to the process.

Issue: The issue here is the right of the academic senate to place matters before the governing board versus the duties assigned to a chancellor or college president to construct the agenda for governing board meetings.

Citation: Title 5 §53203(c) states, “While in the process of consulting collegially, the academic senate shall retain the right to meet with or appear before the governing board with respect to the views, recommendations, or proposals of the senate. In addition, after consultation with the administration of the college and/or district, the academic senate may present its views and recommendations to the governing board.” Thus, the academic senate has the right to place matters directly before the board, even if the chancellor objects.

Process: While good practice would be to establish a standard process whereby items are placed on the board agenda, such a process must recognize the right of the academic senate to place items on the agenda, with the role of the chancellor, or president in a single college district, being one of consultation rather than as a gatekeeper. Such a process may reasonably have deadlines and format requirements. The process can allow for the chancellor or president or others to comment on all items before they are advanced to the agenda. This process has several advantages. The chancellor will have insight as to the timing of the item going to the board. Issues may develop that make it more

advantageous to the senate to present the item to the board at a slightly later date. The chancellor will also have insights into how the board will react to the item and will be able to give advice on effective approaches. The chancellor or president may even be able to directly resolve the issue without the need to approach the board.

The academic senate president should approach the chancellor and cite the above section of Title 5. A request should be made to modify the chancellor's proposed process to correctly reflect the academic senate's right to present material directly to the board. Any written process needs to reflect the special legal position of the academic senate as opposed to general public comment. Academic senate items are not to be relegated to the "public comment" section of the agenda. If the chancellor is insistent on this point, the academic senate president should take the matter directly to the governing board.

Suggestion: The board of trustees should have operational procedures regarding the construction of agendas for its meetings. These procedures should allow for regular reports from the academic senate and should allow for action items to be presented to the board by the academic senate after consultation with the chancellor or college president. The procedure should incorporate reasonable expectations such as presenting the items in writing to the chancellor or president by a given date and allowing for comment by the chancellor or president on each item. The academic senate and the chancellor or president would both be well served to work together to determine when and how an issue is best brought to the board. See "Participating Effectively" question 34.

Academic Senate-Union Relations

Scenario 35 The faculty collective bargaining agent has renegotiated the contract and changed the language regarding the process for determining the academic calendar. Previously the contract called for the union and the academic senate each to appoint one person to a calendar committee. Now the union appoints both. The union did not consult with the academic senate before negotiating this change. The matter has now come before the academic senate for a response.

Issue: The issue here is the respective rights of the academic senate and the collective bargaining agent and how they collaborate on issues where such rights may overlap.

Citation: Education Code §70902(b)(7) requires the governing board to establish procedures to ensure "the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards." Government Code §3540 et seq. (Rodda Act) establishes the right of exclusive bargaining agents to negotiate hours, wages, and working conditions. Title 5 §53204 states, "Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations." The academic calendar is a matter that has both academic and working conditions implications.

Process: The academic senate and the bargaining agent should seek ways in which the two

organizations can “consult, collaborate, share or delegate among themselves” the responsibility for representing the faculty in constructing the academic calendar. When the roles of the two organizations overlap, the senate and the bargaining agent should work together to ensure that both voices are included in an appropriate manner. In the scenario above, the academic senate might propose that the union appoint a faculty member identified by the senate to be one of the two members on the calendar committee. To avoid similar situations in the future, methods should be sought to increase communication and collaboration between the senate and the union. Effective strategies may include the use of liaisons between the two boards, regular meetings between the presidents, regular meetings between the two boards, and delineation-of-function agreements that put into writing compromises like the one suggested above.

Suggestion: Communication and operations between the academic senate and the faculty union should ideally take place on good terms. The contract proposal should recognize the interests of both groups in the calendar and should therefore include in some manner the voices of both organizations. See “Participating Effectively” questions 26 and 27.

Scenario 36 The college’s Student Equity and Achievement Committee, charged by the academic senate with developing proposals in the area of student preparation and success, has developed a plan for instructor advisors. Following this plan, instructors would do academic advising, particularly educational planning, for students majoring in the specific instructor’s discipline. This practice is new to the college and has not been tried before. The advising would be done during normal office hours so that additional work hours would not be added. The proposal has come to the academic senate so that a recommendation may be forwarded to the governing board. The union liaison in attendance at the meeting states that this proposal would add a task to the instructor job description and thus falls under working conditions.

Issue: The issue is whether or not instructor advising is a matter for the academic senate, the union, or both, and thus whether it requires a collaboration between the two groups.

Citation: Title 5 §53200(c)(5) indicates “standards or policies regarding student preparation and success” as an academic and professional matter requiring consultation with the academic senate, and advising of students is certainly an issue that relates to student preparation and success. However, Government Code §3540 et seq. (Rodda Act) establishes the right of exclusive bargaining agents to negotiate hours, wages, and working conditions. Because this proposal would add advising to the expected job performance of all instructors, not on a voluntary basis, and is not in the current contract, the matter impacts working conditions and should therefore be negotiated. The proposal may very well have merit, but its implementation should include approval through collective bargaining. Because it also involves the academic and professional matter of student preparation and success, the academic senate should be included in the implementation discussion and decisions as well.

Process: The academic senate should refer the proposal to the union for negotiation. The union should consult with the senate as the proposal develops.

Suggestion: At its inception, the bargaining implications of the proposal should have been discussed with the union. See “Participating Effectively” question 25.

Scenario 37 The faculty union has been frustrated with the lack of responsiveness of the college

president regarding issues under negotiation. Both the union president and the college president are on their respective negotiating teams. The union president comes to the academic senate with a resolution calling for a vote of no confidence in the college president because of failure to make timely and substantive responses to items under negotiation.

- Issue:** The issues here are the role of the academic senate in the negotiation process and the appropriate use of a vote of no confidence.
- Citation:** The academic senate does not have a role in the negotiation process once the process has begun. Any action on the part of the academic senate, even when requested by the union president, could be construed to be an intrusion into collective bargaining and a violation of Government Code §3540 et seq.
- Process:** The academic senate should not take action on the vote of no confidence. First, such an action by an academic senate should be based on matters within the purview of the senate, not on contract negotiations in which the academic senate has no role. Second, the college president follows the direction of the board in negotiations and is not an independent agent. Third, a vote of no confidence is an extreme measure to be taken only when major issues have gotten to the point that no resolution is possible and irreparable harm will be done to the institution. Such a vote calls on the governing board to remove the president. A vote of no confidence should describe the specific issues and document them thoroughly in a professional manner, not vindictively or spitefully. Such a vote is a declaration on the part of the academic senate that its working relationship with the president can no longer function and that all available means will be used to secure the removal of the president.
- Suggestion:** The union leadership deals with negotiating problems at the bargaining table and must recognize that the academic senate is not the venue for addressing such problems.

Scenario 38 Prior to the latest round of contract bargaining, the faculty union’s negotiation team met with academic senate representatives to discuss possible changes to the tenure-track faculty evaluation process. Later, in an update on the status of negotiations, the union reveals a proposal for changes to the evaluation process that is significantly different from that discussed with the senate in pre-negotiation meetings. The senate protests that the union is required under Education Code to consult with the academic senate regarding faculty evaluation and has not honored that requirement. The union responds that once negotiations begin, consultation with the senate is no longer required and the union is not bound by any previous discussions.

- Issue:** The issue is the degree to which bargaining units are required to consult with academic senates regarding the negotiation of faculty evaluation processes.
- Citation:** Education Code §87610.1(a) states, “In those districts where tenure evaluation procedures are collectively bargained pursuant to Section 3543 of the Government Code, the faculty’s exclusive representative shall consult with the academic senate prior to engaging in collective bargaining on these procedures.” Similar language exists in Education Code regarding evaluation processes for tenured faculty and part-time faculty (§87663(f)). Education Code does not make any statement regarding communication between the bargaining unit and the academic senate after bargaining has begun.
- Process:** The wording of the applicable code section states only that bargaining units must

consult local academic senates regarding evaluation processes before bargaining begins. The spirit of the section might be taken to indicate that academic senates have an interest in faculty evaluation procedures and should be consulted to the degree possible on the negotiation of these procedures. Faculty bargaining teams should meet with their academic senates before bargaining begins to develop a mutual understanding regarding goals, priorities, and acceptable concessions on evaluation procedures. After negotiations begin, the bargaining team should keep the senate informed to the degree possible regarding proposals and developments in the negotiation process. However, academic senates must understand that the bargaining team must be free to negotiate and cannot be bound to confer with the senate on all proposals and possibilities that arise in the negotiation process.

Suggestion: Local senates and faculty bargaining units should develop an ongoing and consistent system of communication between the two bodies, such as liaison reports at each other's meetings or a group of representatives from the two bodies that meets at regular intervals. Such a system can help senates and unions understand each other's perspectives and priorities and might therefore assist in avoiding conflicts such as the one in the above scenario. Another possibility is to have the negotiations teams agree to the establishment of a joint task force with members from both sides of negotiations and representatives from the academic senate to meet and bring forward a proposal for changes to the evaluation process. Though the work product from the task force would still only be advisory to the negotiations process, it would increase the chance that both sides could agree when the item is finalized at the negotiations table.

Scenario 39 The current faculty bargaining agreement contains provisions for sabbatical leaves, including the number of leaves each year and the requirements for a faculty member to be granted such a leave. This process includes no role for the academic senate. The academic senate president approaches the faculty union and states that sabbatical leaves are a matter of professional development and therefore fall under the purview of the academic senate. The senate president asks that in the next round of negotiations the language in the bargaining agreement be changed to grant responsibility for the sabbatical leave process to the academic senate.

Issue: The issue is the right to and responsibility for faculty sabbaticals.

Citation: Title 5 §53200(c)(8) indicates "policies for faculty professional development activities" as an academic and professional matter under the purview of academic senates. As the purpose of sabbatical leaves is generally understood to be an opportunity for professional development, academic senates do have an interest in sabbatical processes. However, neither Education Code nor Title 5 grants faculty any specific right to sabbatical leave. Thus, faculty's right to sabbaticals, including the number of sabbatical leaves granted and the requirements for or circumstances of the leaves, is wholly dependent on the discretion of the district and the language negotiated into the faculty bargaining agreement, making sabbatical processes a matter of union purview.

Process: Sabbatical leaves are an area in which academic senate and bargaining unit purviews and interests overlap. The academic senate should request a dialogue with the union to develop a reasonable process that includes the senate in terms of the professional development aspects of sabbaticals, such as evaluation and approval of sabbatical

project proposals and acceptance of the final products of the sabbaticals. Such a process might, for example, include representation from both the union and the academic senate on a sabbatical committee that recommends sabbatical requests to the district chancellor or college president. However, the senate should not maintain its demand of full responsibility for the sabbatical process, as many aspects of the process are matters of work conditions and are therefore clear matters of union purview.

Suggestion: Local senates and faculty bargaining units should develop an ongoing and consistent system of communication between the two bodies, such as liaison reports at each other's meetings or a group of representatives from the two bodies that meets at regular intervals. Such a system can help senates and unions understand each other's perspectives and priorities and might therefore assist in avoiding conflicts such as the one in the above scenario. See "Participating Effectively" question 27.