

**TITLE 5 REGULATIONS: CLASSIFIED
PARTICIPATION IN GOVERNANCE**

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***ACTION PENDING
(PUBLIC HEARING)***

Committee of: *The Whole
Catherine L. Unger, President*

Presentation: *Ralph Black
General Counsel*

Issue

This item presents proposed revisions to title 5, section 51023.5, designed to clarify the role of collective bargaining agents and other organizations in representing classified employees in local participatory governance.

Background

In 1991, as part of the implementation of AB 1725 (Stats. 1988, ch. 973), the Board of Governors adopted title 5, section 51023.5, to establish requirements for participation by classified employees in district governance. The regulation requires district governing boards to recognize existing councils, committees, or employee organizations which represent classified employees and to accord them a role in governance. Among other things, organizations recognized by the governing board are accorded the right to appoint classified representatives to task forces and other governance bodies.

Section 51023.5 was specifically written to ensure that such efforts not interfere with collective bargaining agreements or the role of classified unions. However, disputes have arisen over the years between unions and classified senates, particularly with respect to the appointment of classified representatives to task forces and other governance bodies. In 2001, this culminated in the enactment of SB 235 (Stats. 2001, ch. 799, §1), which added section 70901.2 to the Education Code.

Earlier this year, the Community College Council/California Federation of Teachers (CCC/CFT) brought to the Consultation Council a proposal to revise section 51023.5 in light of SB 235. Based on the advice of the Council, the Chancellor agreed to have staff meet with representatives

of unions and classified senates to discuss the proposal and determine the need for revisions to section 51023.5.

Analysis

Although section 51023.5 does not directly conflict with SB 235, staff believes that some minor amendments would be useful to clarify the requirements of the regulation and help avoid future disagreements. The meeting with representatives of the unions and classified senates did not result in agreement regarding amendments to section 51023.5, but the attachment presents the efforts of the Chancellor's Office to balance the competing interests of the various groups in a manner consistent with the law.

The proposed changes to section 51023.5 were discussed at meetings of the Consultation Council in October and November 2002. Consensus was not reached, but the proposal has been modified in an attempt to address many of the concerns raised by various groups in Consultation. The proposed changes to section 51023.5 are described below. Subsection (a)(7) regarding appointments to governance bodies is amended to:

Specify that where a group of classified employees has selected an exclusive representative for purposes of collective bargaining, the exclusive representative has the right to appoint classified employees to serve on governance bodies;

Indicate that the exclusive representative and the governing board may agree to an alternative process for appointing representatives;

Clarify that a district may also allow other organizations recognized by the governing board to appoint representatives to task forces or governance bodies that deal with issues outside the scope of bargaining;

Specify that release time, appointments, or other rights accorded to these other organizations cannot exceed that allowed to the exclusive representative;

Clarify that the appointment of representatives for employees not in a bargaining unit shall be made by, or in consultation with, any organization other than a bargaining agent which has been recognized by the governing board; and

Specify that these rules apply to appointments to any task force, committee, or other governance group used to consult with staff regarding implementation of section 51023.5 or to discuss other issues having a significant affect on staff as determined pursuant to subsection (a)(4) of the regulation.

Conclusion

The proposed revisions to section 51023.5 are presented to the Board for review and public comment. A recommendation for action is anticipated at the March 2003 Board of Governors' meeting.

(B) Where a group of employees is not represented by an exclusive agent, the appointment of a representative of such employees on any task force, committee or governance group shall be made by, or in consultation with, these any other councils, committees, employee organizations, or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation.

(C) In all other instances, the selection—When the task force, committee or governance group will deal with issues outside the scope of collective bargaining, shall either be made by, or in consultation with, such staff groups, any other council, committee or staff group, other than an exclusive agent, that the governing board has officially recognized in its policies and procedures for staff participation may be allowed to designate an additional representative. These organizations shall not receive release time, rights, or representation on such task forces, committees, or other governance groups exceeding that offered to the exclusive representative of classified employees

(D) In all cases, representatives shall be selected from the category that they represent.

(b) In developing and carrying out policies and procedures pursuant to §subsection (a), the district governing board shall ensure that its actions do not dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. In addition, in order to comply with Government Code §sections 3540, et seq., such procedures for staff participation shall not intrude on matters within the scope of representation under §section 3543.2 of the Government Code. ~~In addition,~~ gGoverning boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Nothing in this §section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards. It is the intent of the Board of Governors to respect lawful agreements between staff and exclusive representatives as to how they will consult, collaborate, share, or delegate among themselves the responsibilities that are or may be delegated to staff pursuant to these regulations.

(c) Nothing in this §section shall be construed to impinge upon the policies and procedures governing the participation rights of faculty and students pursuant to §sections 53200-53204, and §section 51023.7, respectively.

(d) The governing board of a community college district shall comply substantially with the provisions of this §section.

Note: Authority cited: Section 70901, Education Code. Reference: Sections 70901, 70901.2 and 70902, Education Code; sections 3540 et seq., Government Code.

Proposed Revisions to Regulations on Classified Participation in Governance

- 1 Section 51023.5 of subchapter 1 of chapter 2 of division 6 of title 5 of the California Code of Regulations is amended to read:

51023.5. Staff.

(a) The governing board of a community college district shall adopt policies and procedures that provide district and college staff the opportunity to participate effectively in district and college governance. At minimum, these policies and procedures shall include the following:

(1) Definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its college(s) that, for the purposes of this Section, the governing board is required by law to recognize or chooses to recognize pursuant to legal authority. In addition, for the purposes of this Section, management and nonmanagement positions or groups of positions shall be separately defined or categorized.

(2) Participation structures and procedures for the staff positions defined or categorized.

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

(4) Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff.

(5) Except in unforeseeable, emergency situations, the governing board shall not take action on matters significantly affecting staff until it has provided staff an opportunity to participate in the formulation and development of those matters through appropriate structures and procedures as determined by the governing board in accordance with the provisions of this Section.

(6) The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration.

(7) ~~The selection of staff representatives to serve on~~ When a college and or district task forces, committees, or other governance groups, is used to consult with staff regarding implementation of this section or to deal with other issues which have been determined to significantly affect staff pursuant to subdivision (a)(4), the appointment of staff representatives shall, when required by law, be made as follows:

(A) The exclusive representative shall appoint representatives for the respective bargaining unit employees, unless the exclusive representative and the governing board mutually agree in a memorandum of understanding to an alternative appointment process.