

A. THE ACADEMIC SENATE IN CALIFORNIA: A BRIEF HISTORY

A more full account of the growth and development of the Academic Senate for California Community Colleges can be found on our Website and in several publications authored by Edith Conn, who served as the Academic Senate's archivist. Briefly stated, however, this organization has its roots in an Assembly Concurrent Resolution adopted in 1963, asking the State Board of Education (which at that time had a junior college bureau) to establish academic senates "...for the purposes of representing [faculty] in the formation of policy on academic and professional matters ...". While there were at the time local academic senates, this resolution gave senates legal recognition and a specific jurisdiction--academic and professional matters. At that time there were also several statewide faculty organizations: the unions, California Teachers Association (CTA) and California Federation of Teachers (CFT), and what is now Faculty Association of California Community Colleges (FACCC) (then called CJCFA--the California Junior College Faculty Association). There was also the California Junior College Association (CJCA), now the Community College League of California (CCLC), which then had a faculty component, though it now represents the CEOs and Trustees at the state level. Many of these organizations supported the formation of local senates, and in 1967, legislation was enacted to create the Board of Governors and the Chancellor's Office for the California Community Colleges.

In 1968 Norbert Bischof (Math and Philosophy, Merritt College), called the first statewide meeting of local academic senate presidents to explore ways to create a state senate to represent local senates at the Chancellor's Office and before the Board of Governors. Working with Ted Stanford (now deceased), Bischof wrote a constitution for the Academic Senate, which was adopted in May 1968, ratified statewide, and approved by the Board of Governors in October 1969; the Academic Senate incorporated as a nonprofit organization in November 1970.

These organizational milestones, and many others detailed on the Website, prepared the Academic Senate for the new responsibilities to arise out of the 1986 report of the Commission for the Review of the Master Plan for Higher Education, focusing exclusively on the community colleges. This document, *The Challenge of Change: A Reassessment of the California Community College*, led the way for the great reform legislation, AB 1725 passed by the legislature in 1988, giving many new responsibilities to both local senates and the Academic Senate for California Community Colleges. Subsequently, the remarkable document *California's Faces, California's Future* (1989) supported this community college reform and contextualized the Master Plan within California's shifting demography. The legislation resulted in the July 1990 adoption of Title 5 Regulations, "Strengthening Local Senates." The Academic Senate and the trustee's organization the Community College League of California (CCLC), issued a Memorandum of Understanding that offers a joint interpretation of these regulations. This document was adopted at the 1992 spring session of the Academic Senate. Subsequently, a revised Q&A document was jointly produced with CCLC and adopted by the Senate at the Fall 1998 Plenary Session; this document appears on the Academic Senate Website. A companion document applies the interpretations to specific scenarios. Those earlier legislative actions and their subsequent codification in Title 5, as well as the legal and interpretive documents that emerged provide the framework for the discussion below.

In the landmark legislative package that was AB 1725, the California community colleges were uncoupled from K-12 and given status as institutions of higher education. In so doing, the

legislature substituted pre-and post tenure reviews, lengthened the tenure period, and strengthened the role of the local academic senates as central to the effort of institutional development. Contained on the Academic Senate Website's Leadership page is the remarkable piece of legislation--and its significant intent language or what the legislators wished to see accomplished under the official chapter language of the law. All college leaders should be familiar with this document.

B. THE LEGAL BASIS: EDUCATION CODE, TITLE 5, AND LOCAL IMPLEMENTATION

The roles and responsibilities of the local senates and their faculty are spelled out in several venues:

At the State Level:

Education Code: These laws are a result of legislation--and can be modified only by subsequent legislative action. They appear in their full text, including the intent language of the original author(s), on the legislature's Website, www.ca.leginfo.gov.

Title 5: The policies and regulations of the Board of Governors, and their interpretations and strategies for implementation of Education Code, are contained within this collection. They are published as part of the California Code of Regulations (at <http://ccr.oal.ca.gov>) or are available on the Academic Senate Website. These Title 5 regulations have the force of law, though they can be modified by action of the Board of Governors without legislative intervention. In addition, the Board of Governors enacts "Standing Rules" that instruct the Chancellor's Office on how to carry out its functions.

1. Sections of Education Code and Title 5 Affecting Academic Senates

The following table summarizes some of the significant segments of the California Code of Regulations and the Title 5 Regulations. While we have excerpted portions of these laws in this document, we urge you to familiarize yourself with the full text of these regulations as they appear on the Websites accessed through the Leadership page. These important legal strictures are designed to ensure faculty's full participation in the educational process that is the community college.

DEFINING AND UNDERSTANDING THE ROLE OF THE ACADEMIC SENATE EDUCATION CODE: Selected Passages Specifying the Roles of the Academic Senate

SECTION 70902 (b)(7) GOVERNING BOARDS; DELEGATION

The governing board of each district shall establish procedures to ensure faculty, staff, and students the opportunity to express their opinions at the campus level, and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

SECTION 87359 (b) WAIVER OF MINIMUM QUALIFICATIONS; EQUIVALENCY

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. 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.

SECTION 87360 (b) HIRING CRITERIA

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.

SECTION 87458 (a) ADMINISTRATIVE RETREAT RIGHTS

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. 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.

SECTION 87610.1(a) TENURE EVALUATION PROCEDURES

The faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

SECTION 87663 (f) EVALUATION PROCEDURES

The faculty's exclusive representative shall consult with the academic senate prior to engaging in collective bargaining regarding those procedures.

SECTION 87743.2 FACULTY SERVICE AREAS

The exclusive representative shall consult with the academic senate in developing its proposals with regards to faculty service areas.

SECTION 53200 DEFINITIONS

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

Academic and Professional matters means the following policy development matters:

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

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

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

SECTION 53203 POWERS

A) The governing board shall adopt policies for the appropriate delegation of authority and responsibility to its college academic senate.

B) In adopting the policies described in section (a), the governing board or designees, shall consult collegially with the academic senate.

C) While consulting collegially, the academic senate shall retain the right to meet with or appear before the governing board with respect to its views and recommendations. In addition, after consultation with the administration, the academic senate may present its recommendations to the governing board.

D) The governing board shall adopt procedures for responding to recommendations of the academic senate that incorporate the following:

1. When the board elects to rely primarily upon the advice and judgment of the academic senate, the recommendation of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted.
2. When the board elects to provide for mutual agreement with the academic senate, and an agreement has not been reached, existing policy shall remain in effect unless such policy exposes the district to legal liability or fiscal hardship. In cases where there is no existing policy, or when legal liability or fiscal hardship requires existing policy to be changed, the board may act, after a good faith effort to reach agreement, only for compelling legal, fiscal, or organizational reasons.

E) An academic senate may assume such responsibilities and perform such functions as may be delegated to it by the governing board.

F) The appointment of faculty members to serve on college committees shall be made, after consultation with the chief executive officer or designee, by the academic senate.

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

2. Incorporating the Law at the Local Level: Board Policy, Regulations, Delegation of Authority, and Senate/Union Relations

Board Policy and Regulations

The state laws and regulations noted above are further encoded by your local board of trustees. Education Code and Title 5 grant certain powers and call for specific actions on the part of local boards. Local boards may enact: Board Policies and Rules and Regulations (Strategies for Implementation).

Moreover, those state laws and regulations often clearly stipulate the role that your local senate must play in formulating and revising local policies and regulations, particularly if they were generated by mutual agreement between the board and your senate. While many districts post their local policies and regulations on their Websites, you will want to secure full and current copies of these documents for your local senate files and to ask for periodic updates to ensure that your copies accurately reflect any recent board action.

Delegation of Authority

The most significant of these board policies is the one in which your previous academic senate officers and your board of trustees stipulated the delegation of authority in accordance with Title 5, §53200; samples of such policies appear in Appendix A. These academic and professional matters are often called the 10 + 1 items over which the senate faculty have primacy. The intent of the law and your local policy is to assure "effective participation" of all relevant parties, and to ensure that the local governing board engages in "collegial consultation" with the academic senate on matters that are academic and professional in nature. Often called the "shared governance" policy, that term does not appear in statute and, in fact, may contribute to misunderstandings; some administrators or other affected parties misinterpret the regulations to call for equal voice or mandatory consensus on all matters, even when those are academic and professional matters over which the faculty have privilege and primacy. "Effective participation" means that affected parties must be afforded opportunity to review and comment upon recommendations, proposals, etc.; having given due and reasonable consideration to those comments, however, the academic senate shall retain its primacy in the 10 + 1 items noted earlier on the chart and need not adopt, accommodate, or reach consensus on concerns raised by other constituent groups. To attest to the fact you have afforded other groups opportunity to review your proposals, you may wish to adopt a procedure and sign-off sheet such as those included in Appendix B.

Your local policy is important for you and your senators to review annually so that all understand which of the 10 + 1 items of academic and professional nature are defined as "rely primarily" and/or which are "mutually agreed." While the concepts of mutual agreement have their genesis in labor law and hence are more restrictive, there are significant differences between consequential application of each methodology.

If, for example, your governing board has elected to "rely primarily" upon the recommendation of your local senate for one or more of the 10 + 1 items, the board must ordinarily accept the senate's recommendations, EXCEPT when "exceptional circumstances and compelling reasons" may exist. Participating Effectively in District and College Governance, a document written by a joint task force of representatives of the California Community College Trustees (CCCT), the Chief Executive Officers of the California Community Colleges (CEOCCC) and the Academic Senate for California Community Colleges, makes the following point about these two concepts, "exceptional circumstances" and "compelling reasons":

The regulations do not define the terms . . . and these terms are not intended to have a legal definition outside the context of this law. . . . These terms mean that . . . in instances where a recommendation is not accepted[,], the reasons for the board's decision must be in writing and based on a clear and substantive rationale which puts the explanation for the decision in an accurate, appropriate, and relevant context. (p. 4, Question 12) [Note: for a full copy of these discussions, please visit the "[Scenarios to Illustrate Effective Participation in District and College Governance](#)" document available on the Academic Senate Website.]

On the other hand, where the board has adopted a policy of mutual agreement on any or all of the 10 + 1 items, the board may not act without having reached agreement with the senate, except when the existing policy "exposes the district to legal liability or causes substantial fiscal hardship." In these circumstances, a board may act without reaching mutual agreement provided that it has made a good faith effort to reach agreement and has "compelling legal, fiscal or organizational reasons" to act without waiting any longer for agreement. (p. 5, Question 14)

As these matters continue to be confronted, and as districts' nuanced interpretations of these regulations come to light, these topics are routinely addressed at the Academic Senate's annual Leadership Institute, as well as in many publications available on our Website. Appendices A and B offer samples of local policies and procedures to ensure collegial consultation and mutual agreement are reached.

Senate/Union Relations

The academic senate and your campus' collective bargaining agent (union) work together for the benefit of faculty, but questions often arise concerning the roles of the respective organizations. Put in its simplest terms, the academic senate represents the faculty in academic and professional matters, and the collective bargaining agent represents the faculty regarding working conditions.

More specifically, the academic senate represents the faculty in the eleven specific areas defined by Title 5 §53200-204. In addition, the Education Code assigns myriad additional responsibilities to academic senates, such as minimum qualifications and equivalency processes, faculty hiring, faculty evaluation and tenure review, administrative retreat rights, and faculty service areas. The collective bargaining agent represents the faculty in such areas as workload, assignment, working hours, academic calendar, and salary and benefits. Typically, the role of the collective bargaining agent is evident in the agreement between the union and the district.

Do these roles overlap? Yes, and in a variety of ways. For example, "policies for faculty professional development" is one of the academic and professional matters assigned to the academic senate by Title 5. But many collective bargaining agreements also address such areas, particularly with respect to flex service – though the focus might tend more toward the legal aspects (service obligations, etc.) Likewise, sabbatical leaves (terms, application process, requirements, pay) are typically addressed in the collective bargaining agreement. However, as faculty professional development is among the academic and professional matters, some local senates elect the sabbatical committee chair and may appoint committee members, which has the effect of making the sabbatical committee a senate committee. A reminder: having a senate committee's status protected by the contract does not make it any less a senate

committee. The contract language would ensure that the local senate would retain its right to appoint and report and to render decisions.

These are only two examples of how the local academic senate and the collective bargaining agent commingle their responsibilities. Those are further entangled as, the Education Code requires that bargaining agents consult with the academic senate's prior to engaging in bargaining on evaluation, tenure review processes and faculty service areas. Additionally, the bargaining units should consult with the senate prior to negotiations to determine if there are additional areas of mutual interest and concern to be placed on the table. Some senates and unions may wish to establish joint committees or issues-oriented task forces to exchange information (see Appendix C). Other useful suggestions are contained in the Academic Senate paper, *Developing A Model for Effective Senate/Union Relations* (1996). Remember that each organization has its primary area of responsibility and focus, and that each may (and likely will) approach issues differently. Remember, too, that each organization represents the same group of people. Faculty interests are best served when the two faculty representative groups work cooperatively with each other."