

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95811-6549
(916) 322-4005
<http://www.cccco.edu>



January 23, 2013

Theresa Cho
Morrison Foerster
425 Market Street
San Francisco, CA 94105

RE: Response to the Petition Rulemaking under Rule 212 of the Board of Governors' Procedures and Standing Orders**Summary**

On December 12, 2012 the Chancellor's Office received a Legal Challenge and Petition for Rulemaking submitted by California Competes: Higher Education for a Strong Economy. According to the Procedures and Standing Orders of the Board of Governors section 212, the Chancellor is required, within 45 days, to respond in writing to any such challenge.

California Competes argues that California Code of Regulations title 5 sections 53200 and 53203 are unlawful because: 1) the regulations conflict with the state law; 2) the regulations transfer decision making power from local boards of trustees to academic senates; 3) the regulations disenfranchise staff, students and faculty; and 4) the regulations do not comply with the requirements of clarity and consistency. California Competes also contends that, even if not unlawful, the regulations are bad public policy for reasons described in the petition.

I have carefully reviewed the materials submitted by California Competes. I appreciate the attention and effort that California Competes has devoted to this effort. It is clear that California Competes deeply believes that the regulations at issue are detrimental to the successful management and operation of California's community colleges. However, after consultation with legal counsel, I have concluded that the regulations are not unlawful. Furthermore, California Competes' positions regarding public policy, although well-meaning, are seriously flawed.

The Regulations are not Unlawful

In 1991, in response to recently enacted legislation, known as AB 1725, the Board of Governors adopted regulations regarding governance at community college districts. Prior to adoption of the regulations by the Board of Governors, there were extensive meetings and discussions on the merits of the regulations. In fact, many of the arguments presented by California Competes were presented at that time. There were public hearings and all appropriate procedural steps were taken. Having gone through this extensive process that includes substantial procedural safeguards, it seems quite clear that deference should be granted to the action taken by the Board of Governors over twenty years ago.

The Legislature has been aware of the regulations and could have adopted legislation to address a defect if needed. By letter dated April 24, 1991 Legislative Counsel Bion Gregory advised Senator David Roberti that section 53023 “enlarged the scope of section 70901.” Thus, the Legislature has had ample opportunity to adopt additional legislation to change the law to conform to the Legislative Counsel’s opinion. That this has not occurred suggests that the Board of Governors correctly carried out the legislative intent of AB 1725 that the academic senate should have an elevated role in governance. Furthermore, petitioner has relied upon a narrow reading of Education Code section 70901(b)(1)(E). The Board’s authority is not limited to the language of that section alone. The Board has broad authority to adopt regulations necessary and proper to carry out its functions.

California Competes argues that the regulations transfer power away from districts and disenfranchise students and others. This is simply incorrect. The structure for collegial consultation established by the regulations is somewhat complex, but the regulations do not give academic senates “veto power” as claimed by California Competes. Instead, the regulations provide a mechanism under which academic senates have the opportunity to influence decisions in their areas of expertise. The regulations also provide mechanisms under which local boards of trustees can take action contrary to the recommendations of the academic senate. While these mechanisms may be more complicated than California Competes would like, there is no veto power involved.

Shared Governance is Good Public Policy

California Competes public policy arguments are off the mark. These arguments present the opinion of a small organization with very limited experience or understanding of community colleges in California. In California, 72 community college districts administer 112 colleges serving over 2 million students every year. Under these circumstances, it is highly likely that a few will periodically have problems relating to organizational management. California Competes presents anecdotal information from a few colleges to argue that the regulations at issue are the cause of systemwide dysfunction. The reality is quite different.

The regulations at issue have been in place for over two decades. The overwhelming majority of districts have fully incorporated shared governance into their processes and benefit from it. Districts have found ways to accomplish their missions according to the needs of each district. In those rare cases cited by California Competes in which academic senates have attempted to use the regulations to inhibit action, there are invariably deeper problems at the district involving fiscal challenges, leadership, labor –management relations or some other fundamental problem. California Competes would claim that its proposed change to the regulation would solve these fundamental problems, but that is not a reasonable assumption. If an academic senate and a local board of trustees cannot work together amicably, a regulatory change will not improve the relationship.

Even if it becomes easier for a board to force an issue past a recalcitrant academic senate, the underlying problems will prevent real improvement for students. In these cases, the impact of the regulation is not the cause of the problem, it is merely a symptom.

Theresa Cho
January 23, 2013
Page 3

California Competes speculates that the California community colleges would have received more funding if it had different regulations regarding governance. California Competes also says the colleges would be providing better training in vocational and career technical education but for these regulations. Finally, California Competes argues that the regulations will prevent implementation of the Recommendations of the Student Success Task Force. All of these statements are highly speculative and none of them are convincing. While California Competes seems dedicated to improving the performance of the colleges and their students, there is no reason to believe amending these regulations will have that result. In fact, the opposite may be true because a change to title 5 regulations will require every community college district in the state to reopen its local policies and procedures to adopt conforming changes. This will distract districts for other much more important tasks.

In accordance with Section 212 of the Procedures and Standing Orders of the Board of Governors, this decision will become final in 45 days.

Sincerely,



Brice W. Harris
Chancellor

cc: Robert Shireman, Director, California Competes