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December 23, 2003

Mark Snowwhite, Secretary  
Academic Senate for California Community Colleges  
428 J Street, Suite 430  
Sacramento, CA 95814

Re: Single Course Equivalencies  
**Legal Opinion L 03-28**

Dear Dr. Snowwhite:

You requested our assessment of the ability of a community college district to establish a single-course equivalency for hiring faculty. We understand your question to focus on whether a person may be considered to meet minimum qualifications for purposes of teaching a single class where that person does not possess the minimum qualifications (usually a master's degree or its equivalent) in the discipline under which the single course falls.

As you know, Education Code section 87356 requires the Board of Governors to adopt regulations to establish minimum qualifications for service as a community college faculty member. Education Code section 87357 requires the Board of Governors to engage in various activities in establishing those minimum qualifications. Subsection (b) of section 87357 requires the Board to issue a list of disciplines that is to be distributed to the districts "for their use in applying the minimum qualifications for service."

Title 5 of the California Code of Regulations ("title 5"), section 53407 reflects the Board's adoption of disciplines lists. Although the disciplines lists are not fully set out in the regulations, they are incorporated by reference. Section 53407 contemplates disciplines where a master's degree is required as a minimum qualification and disciplines where a master's degree is not generally expected or available as a minimum qualification.

Title 5, section 53410 sets the basic minimum qualifications for credit instructors which include either a master's degree "in the discipline of the faculty member's assignment" or a master's degree "in a discipline reasonably related" to the assignment and a bachelor's degree "in the discipline of the faculty member's assignment." We believe that these Education Code and title 5 sections establish a firm relationship between the disciplines and minimum qualifications.

Education Code section 87359 requires the Board of Governors to adopt regulations setting forth a process to allow local districts to employ faculty members who do not meet the minimum qualifications adopted by the Board of Governors. The section provides that a person may be

hired to serve as a faculty member if the district governing board determines that the individual "possesses qualifications that are at least equivalent to the minimum qualifications specified in regulations of the board of governors adopted pursuant to Section 87356." The section requires a process to ensure that "each individual faculty member employed under the authority granted by the [equivalency] regulations possesses . . . minimum qualifications specified in regulations adopted by the board of governors." (Emphasis added.)

Title 5, section 53430 establishes the standards for hiring faculty based on equivalencies, and it echoes the language of Education Code section 87358 that each individual faculty member must possess minimum qualifications. As noted above, the regulations contemplate a relationship between minimum qualifications and disciplines.

Education Code section 87356 verifies that each individual faculty member is expected to possess minimum qualifications under the regulations. The regulations demonstrate that the focus of minimum qualifications for "teaching faculty" is on the qualifications of persons to teach in a discipline, not to teach individual courses.

The concept of expertise within a discipline is reflected elsewhere in the regulations. Title 5 section 53403 allows persons who have been employed "to teach in a discipline" to continue teaching even if the minimum qualifications or disciplines list are amended after the person is initially hired.

It is likely that the concept of single course equivalencies grew out of the provisional credential that was available when a credentialing system was used to establish eligibility for community college district faculty employment. Under that system, a person could secure a "provisional" credential that listed a course that the individual could teach. The credential allowed its holder to teach the specific course, but the circumstances authorizing such services were very narrow. Former title 5, section 52223 provided the particulars, as follows:

- "52223. A District shall establish the existence of the following facts:
- (a) The district has made every reasonable effort to locate and to employ a person holding a credential other than a provisional credential to teach the particular course to be named on the credential.
  - (b) No such credentialed person is ready, able, and willing to accept such employment in the district.
  - (c) The district shall employ the applicant to teach the course to be named on the credential."

Former section 52225 provided an alternative to the conditions of former section 52223. Under section 52225, a provisional credential could be issued if a local board made a finding that there was an inadequate number of credentialed persons available in the state who were qualified to instruct in a particular discipline or skill and the board found the discipline or skill to be an emergency area of instruction.

The services of a person who taught under a provisional credential did not count towards tenure. The initial term of the provisional credential was one calendar year from issuance, and

reissuance of the credential could not result in employment to teach the same course in the same district for more than three calendar years. (Former title 5, section 52228.) Thus, even under the predecessor credentialing system, the norm was that districts would hire faculty who were qualified to hold "regular" credentials, and service only in specific courses was allowed in very narrow circumstances.

The current minimum qualifications closely resemble the former credential requirements in many areas. It is telling that no current regulations clearly carry over the standards of the provisional credential. If a person were able to produce a provisional credential that was reissued prior to the expiration of the credentialing system, and that person has not exhausted the maximum three calendar years of instruction authorized by the former regulations, that person may be eligible to serve under the terms of the provisional credential up to the maximum authorized three calendar years of service. (See Ed. Code, § 87355 that authorizes service under an unexpired credential notwithstanding the replacement of the credential system with the minimum qualifications system.) However, we believe that such a circumstance is highly unlikely, and we would need to make a specific assessment of the credential and a fuller review of the former regulations in order to make a definitive determination regarding the continued viability of the provisional credential.

Based on the foregoing, we conclude that a district is not authorized to establish a single course equivalency as a substitute for meeting minimum qualifications in a discipline.

Sincerely,

Ralph Black  
General Counsel

RB:VAR:sj

cc: Fusako Yokotobi, Human Resources  
Bobbie Juzek, Human Resources