

April 27, 1995

Regina Stanback-Stroud, President
The Academic Senate For California Community Colleges
1107 Ninth Street
Sacramento, CA 95814

Dear Regina:

This is in response to your request for clarification of the legal responsibilities of local boards in responding to their academic senates when advice of the senate is not followed. I will briefly summarize the law on the matter, and then address each of the nine questions you raise.

Formal Legal Responsibilities In Responding to Academic Senates

The legal responsibilities of local boards in responding to their academic senates are addressed in three places: Education Code Sections 87359 and 87458 and Section 53203 of Title 5 of the California Code of Regulations. The two Education Code provisions are very specific in nature, and deal with how a governing board is to respond to its academic senate on matters of establishing processes for determining equivalency to minimum qualifications (Section 87359), and processes for administrator retreat rights (Section 87458). Both of these statutes contain the following language regarding process:

“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.*”

Subsection (d) Section 53203 of Title 5 addresses procedures which local boards are to incorporate in responding to recommendations of the academic senate. This regulation imposes the following responsibility when the “rely primarily” method of collegial consultation is involved:

“(1) in instances where the governing board elects to rely primarily upon the advice and judgment of the academic senate, the recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendation not be accepted. *If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.*”

Response to Specific Questions Raised

1. Are Boards of Trustees legally required to give a written response upon a verbal request at the Board meeting?

When a governing board does not follow the recommendation of the academic senate on a matter of equivalencies or a matter of administrator retreat rights, the board is to have a written record of the decision which includes the view of the academic senate. This record is to be prepared whether or not the academic senate makes a request for a response. The law does not specify when this record must be prepared. The time for response could be included in the local policies developed to implement Education Code Sections 87359 and 87458. In the absence of local policy, the law would allow governing boards a “reasonable period of time” to prepare the report.

When the “rely primarily” mode of collegial consultation is involved, the local board is required to promptly communicate its reasons in writing, upon request of the academic senate. The manner in which the academic senate makes such requests can be specified in local policies; however, in the absence of such policy, the request could either be verbal or in writing. The definition of “promptly communicate” could be established in local policy; however, in the absence of such policy, governing boards would have a “reasonable period of time” after the board meeting in which to respond.

2. Are Boards of Trustees legally required to give a written response upon a written request at the Board meeting?

This question can be answered by referring to the answer to the first question. Generally speaking, unless specific local policy provides otherwise, governing boards have a “reasonable period of time” in which to prepare reports or respond to requests of the academic senate.

3. In order to legally expect a response, does the request have to be made at the time of the Board meeting?

No request from the academic senate is necessary with respect to a board response on equivalency determinations or administrator retreat decisions. In other instances, the law does not require that the academic senate make its request at the time of the Board meeting. If the academic senate were to later make this request, it would have to be at a subsequent board meeting unless the board had a policy delegating the responsibility to respond to a named district official.

4. How many days are Boards allowed in order to respond to an appropriate request?

The law does not specify a number of days; instead, it calls upon boards to “promptly communicate.” Local district policy could fix the number of days for response. In the absence of such policy, it would seem reasonable that the time for response would be related to how complicated and complex it is expected to be. In most instances it would seem reasonable that governing boards could respond within 10 workdays. This 10 day period is not a legal standard, however.

5. What authority addresses the Board’s legal responsibility to respond in writing to an appropriate request?

Education Code Sections 87359 and 87458, as well as subsection (d) of Section 53203 of Title 5 all indicate the response must be in writing.

6. If the Board does not respond to a request made in the appropriate manner, what should the

individual making the request do in order to exact a written response?

The individual should, in writing, inform the Board of its legal responsibility under the above-cited statutes and/or regulation. A copy of this letter should be sent to the Chancellor of the California Community Colleges or to the Division of Legal Affairs within the Chancellors Office.

7. Does the Chancellor's Office have a process or procedure for addressing the issues of local boards which are not complying with their legal responsibility to give written responses to an appropriate request?

The Chancellors Office uses a two-step process for responding to such allegations. The first step is to make the Chief Executive Officer of the district aware of the concern, and to ask for his or her intended response. In this manner, we attempt to work with the interested parties to the resolve the mater informally and expeditiously. If a mutually agreeable informal resolution cannot be developed, or if the district is unresponsive to what appears to be a violation of law, the Chancellor has the authority, under Section 51023 and 51102 of Title 5, to investigate and enforce compliance with the legal requirements of Education Code Sections 87359, 87458, and Section 53023 of Title 5. Section 51102 specifies a specific process for tie investigation and resolution of alleged violations of minimum standards of the Board of Governors.

8. If the Chancellor's Office does have a process or procedure for addressing the issues of local Boards not complying with the legal responsibility to give written responses to an appropriate request, how would one initiate the process or procedure?

Again, the process or procedure can be initiated by informing the Chancellor or the Division of Legal Affairs within the Chancellor's Office. Our first response, however, will be to seek informal resolution of the matter-in a manner that is acceptable to all parties. If the party alleging the illegal practice wishes to persist, the Chancellor's Office will formally investigate and resolve the issue.

9. If the Chancellor's Office does not have a process or procedure for addressing the issues of local Boards not complying with their legal responsibility to give written responses to an appropriate request, what recommendations/resources of the Chancellor's Office are available to the individual/group making the appropriate request?

The answer to this question is unnecessary, since the Chancellor's Office has a process for addressing the issues you raise.

I trust this letter responds to the questions you raise. Please let me know if you need further information or interpretation.

Sincerely,

SIGNATURE ON FILE

Thomas J. Nussbaum
Vice Chancellor and General Counsel

cc: David Mertes
Ernie Leach