

## **Proposed Regulatory Action Amending Title 5, of the California Code of Regulations, to Include Diversity, Equity, Inclusion, and Accessibility Standards in the Evaluation and Tenure Review of District Employees**

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### **A NEW SUBCHAPTER 1, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS ADDED TO READ:**

#### § 52510. Definitions.

The following definitions shall apply to this chapter.

(a) “Academic employee” refers to any employee categorized as an educational administrator or faculty member pursuant to section 53402.

(b) “Accessibility” means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

(c) “Administrator” means a person who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of, or formulating policy regarding, the administration of non-academic functions of a college or district.

(d) “Anti-Racism” and “anti-racist” refers to policies and actions that lead to racial equity.

(e) “Classified administrator” means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(f) “Competencies” refer to skills, knowledge, abilities, and behaviors all employees shall develop and utilize in interactions with students and colleagues, and the performance of their job duties.

(g) “Criteria” refer to the elements used in employee evaluation and tenure review processes to measure performance.

(h) “Cultural Competency” refers to the practice of acquiring and utilizing knowledge of the intersectionality of social identities and the multiple axes of oppression that people from different racial, ethnic, and other minoritized groups face. The development of cultural competency is a dynamic, on-going process that requires a long-term commitment to learning. In the context of education, cultural competency includes the ability to teach students from cultures other than one’s own successfully. It entails developing interpersonal awareness and sensitivities, learning specific bodies of cultural knowledge, and mastering a set of skills for effective cross-cultural teaching.

(i) “DEIA” is an acronym for the terms “diversity, equity, inclusion, and accessibility.”

(j) “Diverse” and “diversity” refers to the myriad of ways in which people differ, including the psychological, physical, cognitive, and social differences that occur among all individuals, based on race, sex, ethnicity, nationality, socioeconomic status, religion, economic class, education, age, gender, sexual orientation, marital status, and mental and physical ability.

(k) “Educational administrator” means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(l) “Evaluation” refers to a tool to provide and receive constructive feedback to promote professional growth and development.

(m) “Faculty” or “faculty member” means those employees of a district who are employed in academic positions and who are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Cod. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement community college certification qualifications.

(n) “Inclusion” refers to bringing traditionally excluded individuals or groups into processes, activities, and decision and policy making in a way that shares power.

(o) “Minoritize” refers to the subordination of a person or group’s status to a more dominant group or its members based on social identities such as race or ethnicity.

(p) “Non-academic employee” means any employee categorized as a classified administrator or staff member.

(q) “Staff” or “staff member” means those employees of a district who are not encompassed within the definitions in subdivisions (a), (c), (e), (k), or (m), whether or not they are part of the classified service as defined in sections 88003 or 88076 of the Education Code.

Note: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, 88003 and 88076, Education Code.

**SUBCHAPTER 1, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 2.**

**SUBCHAPTER 2, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 3.**

**SUBCHAPTER 3, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 4.**

**SUBCHAPTER 4, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 5, AND AMENDED AS FOLLOWS:**

§ 53400. Scope.

This subchapter implements provisions of the Education Code that govern the minimum qualifications for employment in a community college district as an administrator, a faculty member, or a member of the classified staff. This subchapter implements, and should be read in conjunction with, the requirements of Education Code sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community college faculty and administrators.

Note: Authority cited: Sections 66700, 70901, 87001, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356, and 87359, 88003 and 88076, Education Code.

§ 53401. Applicability to Community Service and Contract Classes.

Community service classes, and ~~or~~ contract classes which that do not award college credit, and are not supported by state apportionment are not subject to exempt from the provisions of this subchapterchapter unrelated to the advancement of diversity, equity, inclusion, and accessibility principles. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.

Note: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B), 78020 through 78023 and 78300, Education Code.

~~§ 53402. Definitions.~~

The following definitions shall apply to this subchapter.

~~(a) “Classified administrator” means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.~~

~~(b) “Educational administrator” means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.~~

~~(c) “Faculty” or “faculty member” means those employees of a district who are employed in academic positions and who are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code, and for which minimum qualifications for service are specified in Section 53410-53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement community college certification qualifications.~~

~~(d) “Staff” or “staff member” means those employees of a district who are not encompassed within the definitions in subdivisions (a) through (c), whether or not they are part of the classified service as defined in sections 88003 or 88076 of the Education Code.~~

Note: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

§ 53403. Applicability of Amendments.

Amendments to this chapter related to minimum qualifications or the implementation of a discipline list adopted by the Board shall not disqualify an incumbent employee from employment in their current position. Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Note: Authority cited: Sections 70901(b)(1)(B) and 87356, Education Code. Reference: Sections 70901(b)(1)(B) and 87356, Education Code.

§ 53425. Ability to Work with Diverse Individuals and Communities

In addition to the category-specific qualifications required by this chapter, all district employees shall demonstrate the ability to work with and serve individuals within a diverse community college campus environment.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.

**SUBCHAPTER 5, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 6.**

**SUBCHAPTER 7, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS ADDED AS FOLLOWS:**

§ 53601. Chancellor's Publication of DEIA Competencies and Criteria

(a) The Chancellor shall adopt and publish a guidance describing DEIA competencies and criteria in collaboration with system stakeholder groups. The DEIA guidance shall be maintained to include current and emerging evidence-based practices developed within the California Community Colleges, or described in DEIA-related scholarship.

(b) The DEIA competencies and criteria identified by the Chancellor shall be utilized in community college district performance evaluations of employees and faculty tenure reviews as specified in this subchapter.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.

§ 53602. Advancing Diversity, Equity, Inclusion, and Accessibility in Evaluation and Tenure Review Processes

(a) District governing boards shall adopt policies for the evaluation of employee performance, including tenure reviews, that requires demonstrated, or progress toward, proficiency in the DEIA competencies published by the Chancellor.

(b) The evaluation of district employees must include consideration of an employee's demonstrated, or progress toward, proficiency in diversity, equity, inclusion, and accessibility

(DEIA)-related competencies that enable work with diverse communities, as required by section 53425. District employees must have or establish proficiency in DEIA-related performance to teach, work, or lead within California community colleges.

(c) To advance DEIA principles in community college employment, districts shall:

- (1) include DEIA competencies and criteria as a minimum standard for evaluating the performance of all employees;
- (2) ensure that evaluators have a uniform understanding of how to evaluate employees on DEIA competencies and criteria;
- (3) set clear expectations regarding employee performance related to DEIA principles, appropriately tailored to the employee's classification;
- (4) place significant emphasis on DEIA competencies in employee evaluation and tenure review processes to support employee growth, development, and career advancement;
- (5) ensure professional development opportunities support employee development of DEIA competencies that contribute to an inclusive campus and classroom culture and equitable student outcomes;
- (6) include a self-reflection and a comprehensive evaluation from appropriate evaluators who reflect a range of perspectives on an employee's performance. The evaluation process shall provide employees an opportunity to demonstrate their understanding of DEIA and anti-racist principles, including how the employee has operationalized DEIA in the performance of their job responsibilities.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.

#### § 53605. Classification-Specific DEIA Obligations.

(a) Faculty members shall employ teaching and learning practices and curriculum that reflect DEIA and anti-racist principles, and in particular respect for, and acknowledgement, of the diverse backgrounds of students and colleagues to improve equitable student outcomes and course completion.

(b) Educational and other Administrators shall include significant consideration of DEIA and anti-racist principles into existing policies and practices, funding allocations, decision-making, planning, and program review processes. These processes shall take into account the experience and performance of students and colleagues of diverse backgrounds, and work to close equity gaps in student outcomes and hiring.

(c) Staff members shall promote and incorporate culturally affirming DEIA and anti-racist principles to nurture and create a respectful, inclusive, and equitable learning and work

environment. In conducting their duties, staff members shall respect and acknowledge the diversity of students and colleagues.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.