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To: Chief Executive Officers

From: Steven Bruckman
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Subject: Minimum Conditions Compliance Advice
Legal Advisory 05-05

The Legislature requires the Board of Governors to establish minimum conditions that districts must meet in order to receive state support. (Ed. Code, § 70901(b)(6).) The regulations appear at title 5 of the California Code of Regulations, starting with section 51000.¹ Although there are only 19 basic minimum conditions regulations, many of the basic regulations incorporate additional provisions. As a result, compliance requirements are far more extensive than is obvious at first glance.²

The System Office is charged with periodic reviews of district compliance and with enforcing compliance with the regulations. (Cal. Code Regs., tit. 5, §§ 51100, 51102.) In late 1999, the System Office launched a major review of district compliance with the minimum conditions. That process proved to be extremely time consuming for the districts under review and for System Office staff. Because a number of the minimum conditions incorporate other provisions, a full review required checking each district's compliance with over 100 specific requirements.

The 2004 System Office Agency Review recommended adopting a new approach for review by relying on audit, self-certification, accreditation, complaint response and spot checks. A memorandum was sent today to chief executive officers announcing the implementation of a new approach based on that recommendation. The System Office will now play a less comprehensive role in the minimum conditions compliance area, and opportunities for self-compliance and other compliance mechanisms will be enhanced. This will permit a more focused deployment of System Office resources to address the most significant compliance issues.

¹ All section references are to title 5 of the California Code of Regulations unless otherwise indicated.

² For example, section 51002 addresses minimum conditions for "standards of scholarship." Section 51002 requires compliance with all the standards of scholarship that appear in subchapter 9 of chapter 6 of title 5 – that's 20 more regulations, and some of these 20 regulations have complex requirements on a variety of topics.

This advisory, relying on years of minimum conditions review experience, attempts to provide districts with the tools they need to take responsibility for ensuring their own compliance. The advisory describes the basic compliance requirements, shares information on problem areas we have identified, and offers guidance on compliance.

Many of the minimum conditions regulations require district boards to adopt local policies or regulations on a topic and to publish those policies or regulations in their catalogs. Our review indicated that formal policies or regulations have not always been adopted. In some cases, the policies or regulations were adopted, but they were not published in the catalogs. We think both steps are important, even if districts are actually complying with the substance of the minimum conditions, because students need to have a way of finding out what the policies and regulations are.

The adoption of formal policies or regulations underscores a district's commitment to those principles that have been deemed important enough to be considered minimum conditions. The process of board adoption also ensures an opportunity for broad input on how minimum conditions will be implemented in a given district. As districts carry out their periodic reviews of policies and regulations, they will automatically assess the currency of their compliance with minimum conditions.

Publishing important requirements in college catalogs makes the information readily available to students. It is not realistic to expect students to seek out and review board policies or regulations concerning minimum conditions. We interpret the regulations to allow a summary statement of the board policies/regulations rather than publishing an entire set of policies or regulations in the catalog, and we believe this is the best approach. The key is to ensure that students have meaningful information about the conditions that affect their educational success.

The remainder of this advisory is divided into two broad categories. The first, entitled "Minimum Conditions Recommendations," provides colleges with suggestions on how to comply with those minimum conditions that the System Office will continue to monitor most carefully. The topics that contain longer discussions reflect the greater likelihood of violations by colleges. The second category, entitled "Other Compliance Topics," lists those minimum conditions that do not require review through the minimum conditions process because compliance is achieved through other mechanisms.

MINIMUM CONDITIONS RECOMMENDATIONS

Standards of Scholarship (§ 51002). Districts must adopt regulations consistent with subchapter 9 of chapter 6, which includes sections 55750 – 55765 of title 5, and publish statements of those regulations in appropriate places in the catalog. Districts must also substantially comply with all the standards of scholarship regulations.

Remedial Coursework Limit (§ 55756.5). In general, students may receive no more than 30 semester or 45 quarter units of credit for remedial coursework. Clearly specify the limitation on remedial coursework that is described in section 55756.5.

Important exceptions to this limitation exist for students enrolled in ESL courses and students who have learning disabilities. "Remedial coursework" is defined as "precollegiate basic skills courses" which are described in section 55502(d) as "those courses in reading, writing, computation, and English as a Second Language which are designated by the community college district as nondegree credit courses pursuant to Section 55002(b)."

It is important to ensure that students are fully advised of the coursework limitations and the exemptions by including a clear statement of the requirements in the catalog. Students should be made aware that all of the coursework they take may not be applied towards their degrees.

Student GPA (§ 55758.5(b)). Districts are prohibited from using nondegree applicable credit course grades in calculating the degree applicable GPA. Be sure that the distinction between degree applicable credit courses and nondegree applicable credit courses is maintained.

Grade Changes (§ 55760). Clearly specify the instances where grades must be changed because they were given in error (as the result of mistake, fraud, bad faith, or incompetence). The term "mistake" is not restricted to "clerical errors" in either Education Code section 76224 (that defines grades given in error) or in this section. Other types of mistakes that result in an incorrect grade must be remedied.

Information describing the process for securing a grade review must be readily available to students.

Although it is generally reasonable to ask students to initially review grade concerns with the instructor who gave the grade, this is not always appropriate. For example, if the student alleges that a low grade was given in retaliation for rejecting unwelcome sexual advances from the instructor, it is not appropriate to require the student to confront the alleged harasser in order to secure a review.

Even where the review properly starts with the instructor, the review process must not be restricted to the sole judgment of the instructor who gave the grade in the first place. The instructor may well recognize if a grade was given in error and immediately correct the error. However, where the instructor stands by the original grade, the student should have access to an impartial assessment for further review.

If a student can demonstrate that a grade was incorrect because it resulted from mistake, fraud, bad faith, or incompetence, and the student was unable to obtain a correction from the instructor, the students' record is "inaccurate" under Education Code section 76232 and that student is entitled to the described process. This process ensures an impartial assessment and the correction of the record in appropriate cases.

It is improper to deny a grade review simply because the instructor who issued the grade is no longer employed or is otherwise unavailable. If an hourly instructor is not

employed in the subsequent term after giving the grade or an instructor takes a sabbatical leave after issuing the grade, other means of initial review must be found. Student grades is one of the enumerated matters that have a significant effect on students pursuant to title 5, section 51023.7 and policy changes in this area trigger student shared governance obligations.

Award of Degrees and Certificates (§ 51004). Districts must adopt regulations consistent with subchapter 10 of chapter 6, which includes sections 55800 – 55810 of title 5 and publish statements of those regulations in appropriate places in the catalog. Districts must also substantially comply with all the regulations related to degrees and certificates.

There are restrictions on what levels of courses may be counted towards an associate degree. Thus, math courses above and including elementary algebra may be counted towards a degree, but math courses below that level may not be counted. Students may apply only one English or ESL course below transferable freshman composition for associate degree credit. Districts should ensure that they observe these limitations when they determine which courses may be counted towards a degree.

Minimum Requirements for the Associate Degree (§ 55806). Each associate in arts or associate in science degree must include a major of at least 18 semester units or 27 quarter units of study in a single discipline or related disciplines. This requirement disallows "majors" with no discernible focus or majors constructed of loosely structured items of interest selected individually by students. Districts should ensure that this requirement is observed and that a clear major is described in connection with each associate degree offered.

Open Courses (§ 51006). In our reviews over the past several years, open course requirements have repeatedly surfaced as a noncompliance area. **Districts are required to adopt a policy providing that all courses claimed for state apportionment are open to all persons meeting properly-established course prerequisites.** Districts must include this statement in their catalogs and each schedule of courses. Because districts could be in technical compliance merely by adopting a policy, the open course requirements contained in other Board regulations are also considered when district compliance with this standard is reviewed. (See Cal. Code Regs., tit. 5, §§ 58050, 58102 et seq.)

Colleges should take the following steps:

1. Widely distribute information about the availability of courses.
2. Be sure that all courses, and meaningful descriptions of those courses, are included in each college catalog.
3. All sections of all courses offered for a given term should be included in the class schedule.
4. If courses or sections become available after the respective publication dates, make meaningful efforts to ensure that the courses are widely advertised.

5. Review course descriptions to be sure they do not imply a restriction on enrollment. For example, avoid descriptions like "designed for youth" or "this is a kiddie college offering." There may be circumstances where it is appropriate to indicate that a course is designed to meet specific needs. This is permissible provided it is not done based on discriminatory criteria (e.g., race, gender, age, etc.) and that the course description in the catalog and schedule of classes explicitly states that all students are welcome. (Cal. Code Regs, tit. 5, § 58102.)
6. Only valid prerequisites to enrollment may be applied, so avoid statements like "instructor will assess eligibility for enrollment on the first day." Such ad hoc assessments are not validated prerequisites that may be used as part of the enrollment process, except under very limited circumstances of intercollegiate competition, honors courses, or public performance courses.
7. Ensure that enrollment in some courses is not dependent on completing extra inappropriate enrollment processes. For example, allegations have been made that enrollment by high school students in some college PE courses first requires the permission of a high school coach or a special enrollment process at a given high school – neither of these conditions on enrollment is appropriate.

Equal Employment Opportunity (§ 51010). Districts are required to develop and submit an equal employment opportunity plan to the System Office, develop meaningful job announcements, conduct full and open recruitment, monitor selection procedures, and establish a process for resolving allegations of violations.

The System Office plans to distribute a model equal employment opportunity plan for district use, but the model plan's completion has been delayed. Districts are still responsible for having a plan that addresses the requirements of the regulations.

For educational administrators and full-time faculty, open recruitment must be at least statewide using the California Community Colleges Equal Employment Opportunity Registry. The Registry makes the process easy – persons listed with the Registry who have the basic qualifications for specific jobs can be identified, and the Registry will provide the district with labels so that job announcements can be sent to those qualified persons.

In-house hiring is prohibited unless permitted by an exception. If none of the exceptions set out in section 53021(c) apply, vacant positions must usually be filled through full and open recruitment. If a district complies with the conditions that are described in section 53021(b), it may limit its recruitment efforts to its existing employees and fill open positions "in-house" for a brief period of time. Remember – in-house only recruiting permits an interim assignment only until a full recruitment process can be conducted.

If a district wishes to use in-house or promotional only recruitment to fill an open position, section 53021 requires the district to so notify the System Office a minimum of 10 working days in advance of offering the position to a candidate. The purpose of notifying our office is to ensure that the limited recruitment process will be and/or has

been appropriate under section 53021 before the candidate is appointed by the district's board. A general notice to our office for multiple positions is unacceptable.

Districts should be prepared to provide the specific, detailed information set forth in the regulations for each proposed interim hire.

Student Fees (§ 51012). Districts are prohibited from charging mandatory fees to students unless they are required to charge a fee or are permitted to charge a fee. In many instances, it is acceptable to charge students optional fees.

Compliance with this minimum condition is perhaps one of the most important because student fees can directly affect the ability of students to take classes. Unfortunately, we found numerous violations of the student fee limitations during our reviews.

Student fees are often questioned by students; the Legislature is also active in monitoring this area. In June, 2002, the Assembly Committee on Higher Education reviewed materials from eighty colleges and questioned the authority or amount of specific fees at twenty-three colleges. The resultant year-long, detailed review by our office found a number of college fees that were inappropriate. Since that review, we expanded our annual fee memo into a Student Fee Handbook, available on-line at <http://www.cccco.edu/divisions/legal/legal.htm>, that describes fee practices in greater detail. It is critically important for districts to assess all of their fees for compliance, and to ensure that new fees are not generated "under the radar" in individual courses or activities.

Specific areas that require extra attention:

1. Notice to students of the existence of fee exemptions. A number of mandatory or authorized fees include required exemptions. For example, districts are permitted to charge a mandatory health fee, but they must exempt certain students from payment. Be sure to give students notice of the existence of any exemptions. Failure to do so constitutes the collection of an unauthorized fee from those students who should have been exempted.
2. Mandatory instructional materials fees that have not been justified under applicable fee standards. The Student Fee Handbook lists several steps that are necessary to the establishment of an enforceable mandatory instructional materials fee. Each district should have a structured process for testing fees against the standards; periodic review of existing fees is needed to be sure that increasing or decreasing costs are considered in adjusting instructional materials fee amounts.

Districts that require students to either provide their own course materials or to purchase them from the district should make it easy for students to know what materials are needed prior to starting the class. For example, if a student has no means of knowing prior to attending the first class meeting that he/she needs to supply 25 pounds of a certain type of clay,

the student has no choice but to purchase the clay from the district or lose out on first day activities that require clay. This problem can be overcome. For example, if each class that has a materials requirement is identified in the class schedule and the college has a means to make a detailed listing of anything the student needs for the class available in advance, the students can obtain the relevant information prior to selecting the class. Other approaches could also successfully ensure that students have access to information about materials requirements prior to signing up for a class.

3. Listing of "course fees" without a means for students to know the actual fee involved. The catch-all term of "course fees" is not a proper substitute for an explanation of all fees students are asked to pay. Students are entitled to know the nature of each fee charged and districts must be clear as to their authority to charge it.
4. Improper mandatory fees for student insurance in allied health areas. Authority exists only for districts to cover such costs.
5. Optional opting out of fees. Districts may require students to pay optional fees unless the students take some action to opt out of payment. However, the "opting out" process cannot be unduly burdensome to the students. For example, a district may require the student to go to a specific site on campus to sign a form to opt out. However, if the site is frequently closed or at a great distance from where most students register or attend classes, the process will be considered unduly burdensome.

Curriculum (§ 51021). Review and approval is required for educational programs and/or courses pursuant to curriculum standards adopted by the BOG at sections 55000 through 55219.

It is critical that courses be properly authorized. Unapproved courses are not eligible for state apportionment, and students who are enrolled in unapproved courses should not be led to believe that they are taking approved courses for any purposes.

Our review revealed that districts sometimes offer courses that are not approved by the System Office when approval is required, and that districts often claim attendance in those unapproved classes for apportionment. In some cases, course approvals were not secured before the courses were offered. In other cases, course approvals were not renewed before the course was offered again after a period of not offering the courses. If a course is approved, but it isn't offered for a two-year period, the approval must be renewed. If courses are not properly approved or renewed, attendance in the courses must not be reported for apportionment.

The Chancellor's Office Program and Course Approval Handbook is available at http://www.cccco.edu/divisions/esed/aa_ir/aa_ir.htm. It addresses credit program and course approval. Legal Advisory 05-03, "Requirements for Claiming Apportionment for Noncredit Courses" was recently issued and is available at

<http://www.cccco.edu/divisions/legal/notices/notices.htm>. This advisory includes important information on noncredit course approval.

OTHER COMPLIANCE TOPICS

Many requirements that were previously subject to formal minimum conditions reviews by the System Office will now be addressed through self-compliance by districts and other mechanisms. However, the System Office reserves the right to review particular issues within these categories if circumstances so require.

Comprehensive Plans (§51008). Districts must develop comprehensive plans that include academic master plans and long range facility master plans. Facility plans are required as part of the capital outlay process and the accreditation process ensures that districts periodically engage in an institutional self-assessment and review all their academic programs. Thus, this standard need not be separately reviewed through the minimum conditions process.

Approval of New Colleges and Educational Centers (§ 51014). Districts must comply with regulations on approval of colleges and educational centers (§§ 55825 through 55831). The apportionment process provides adequate incentives to seek approvals; we do not require separate compliance information from all districts.

Accreditation (§ 51016). Colleges operated by a district must be properly accredited. Our review process recognizes that the external benefits of accredited status are sufficient to ensure compliance, so we do not require specific compliance evidence for this requirement.

Counseling Programs (§ 51018). Districts must provide certain types of counseling services. Our review process recognizes that counseling programs are the norm throughout the system, so we do not require specific compliance evidence for this requirement.

Objectives (§ 51020). Districts must have formally stated instructional objectives. This requirement is typically satisfied as districts develop and review their educational programs. Districts may also review their instructional objectives during the accreditation process. Therefore, this standard is not separately considered through minimum conditions reviews.

Instructional Programs (§ 51022). This regulation combines two requirements. First, districts are required to have policies for the establishment, modification or discontinuance of their courses or programs. Vocational programs require special needs assessment and frequent review. Second, districts are required to coordinate their programs with proximate high school and baccalaureate institutions.

Our review process does not specifically require separate evidence of compliance because federal and other requirements for the periodic review of vocational programs are generally sufficient to ensure compliance in this area. Similarly, the inherent value of coordinating programs with local high schools and baccalaureate institutions is sufficient to ensure compliance.

Faculty Participation in Governance (§ 51023). Districts must adopt policy statements on academic freedom and adopt procedures consistent with sections 53200 – 53206. These latter sections establish the structure for faculty participation in shared governance. Districts must substantially comply with these sections.

Given the ongoing, varied, and often intimate nature of shared governance with faculty, there is no practical way to ensure that appropriate consultation is occurring other than responding to complaints by recognized faculty groups.

Staff Participation in Governance (§ 51023.5). Districts must adopt policies and procedures to ensure that staff have the opportunity to participate in shared governance. Districts must substantially comply with the provisions of the regulation.

As with shared governance with faculty, shared governance with staff is ongoing and varied. We ensure that appropriate consultation is occurring by responding to complaints by recognized classified employee groups.

Student Participation in Governance (§ 51023.7). Districts must adopt policies and procedures to ensure that students have the opportunity to participate in shared governance. Districts must substantially comply with the provisions of the regulation.

As with shared governance with faculty and staff, we ensure that appropriate consultation is occurring by responding to complaints by recognized student organizations.

Matriculation Services (§ 51024). This regulation requires compliance with sections 55500-55534. The Matriculation Unit in the System Office provides technical assistance in the areas of prerequisites, assessment, and matriculation plan review, and it administers the matriculation budget. Additional review through the minimum conditions process is unnecessary.

Full-Time/Part-Time Faculty Ratio (§ 51025). Districts must strive towards a goal that 75 percent of credit instruction be provided by full-time faculty.

This goal is effectively monitored through the apportionment process; additional minimum conditions reviews in this area are unnecessary.

Student Equity (Section 51026). Districts are required to adopt a student equity plan under section 54220.

Districts were recently asked to update and resubmit their student equity plans for review by the System Office. The Student Services Division will be reviewing these plans and attempting to integrate student equity concerns into planning and monitoring for the student services categorical programs. As a result, this requirement will not be separately considered through minimum conditions reviews.

Transfer Centers: Minimum Program Standards (Section 51027). This extensive minimum condition requires districts to recognize transfer as a primary mission and develop a transfer center plan with numerous components. The System Office has developed a checklist format for the submission of annual transfer reports. Those reports will be the basis for minimum condition reviews of this regulation.

SUMMARY

The minimum conditions regulations reflect important principles for the California community college system. Compliance with the minimum conditions addresses those principles and makes districts eligible for state aid. Each district should systematically monitor its own compliance on an ongoing basis, at least in part through its existing audit process. The System Office will also continue compliance monitoring through periodic reviews and in response to compliance complaints. With the cooperation of districts, these processes will protect the principles described in the minimum conditions and assure the public that reasonable accountability measures are in place.

If you have any questions, please feel free to contact me at (916) 322-4005 or Ralph Black at (916) 327-5692.

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