INSTRUCTIONAL MATERIALS REGULATIONS
March 5-6, 2012

_FIRST READING (PUBLIC HEARING)_
Presentation: Barry Russell, Vice Chancellor, Academic Affairs Division

**Item 2.1**

**Issue**

Current regulations need to be clarified to deal with an array of rapidly changing technologies in the delivery of instructional materials. Policies and regulations need to be updated to ensure that colleges can keep pace with these evolving technologies, while also protecting students from unreasonable costs. The current regulations limit the ability of the colleges to offer students the best possible instructional materials.

**Background**

On September 27, 2011, the Chancellor’s Office identified a broad range of stakeholders to serve on the Online Materials Fees Advisory Committee (OMFAC). The purpose of the advisory committee was to evaluate current practice and regulations related to the use of these materials within California community colleges and to make recommendations on possible changes to regulations or best practices that will be communicated to the field.

The advisory committee was made up of a variety of people from the community college field including faculty, several students, the Academic Senate, the Student Senate, a Chief Instructional Officer, a Chief Student Services Officer, a Librarian, members of the Board of Governors, Chancellor’s Office staff and others.

The committee met twice, first on November 16, 2011, and again on December 15, 2011, to discuss existing statues and regulations and advisories/guidelines.

The first meeting was designed to orient members to the issue, history, stakeholders, related codification, overall timeline, and the Chancellor’s Office intended output. The committee reviewed documents and the evolution of current policies, procedures, and practices and heard from a variety of stakeholders including vendors, faculty, and students. They discussed specific language in both the California Education Code and title 5 of the California Code of Regulations (CCR). It was agreed to early in the discussion that changes would not be sought in the California Education Code. The Chancellor’s Office General Counsel was present at the meeting and took the comments from the meeting and developed tentative changes to title 5 language for reaction and discussion at the second meeting.

At the second meeting, committee members were provided with the revised title 5 language and discussed the modifications that were proposed and heard from additional interested parties on the
issues surrounding this topic. The committee was updated on the next steps in the process which included being informed that the Educational Technology Advisory Committee (ETAC) would take on the task of finalizing the CCR title 5 modifications and moving them through the State’s rule making process. All of the members of ETAC were also members of the OMFAC.

Prior to the ETAC receiving the regulations, they were discussed at the System Advisory Committee on Curriculum (SACC) on January 20, 2012. SACC made recommendations to the proposed language. ETAC met on January 30, 2012, to review the modifications recommended by the SACC and had extensive discussions with the General Counsel regarding aspects of the language and to provide its recommendations.

Analysis

Required materials are those identified by the faculty to be essential to the success of the student for the course in which the student has enrolled. These materials can be textbooks, resource materials, safety clothing, clay for a ceramics course, etc. In general, the materials must have some use past the life of the course. Within these parameters, faculty is beginning to select materials that are electronic in nature. However use of these materials has been limited because the current regulation requires that the instructional materials be “tangible”. It was determined that by deleting the word “tangible” from the discussion, highly effective electronic resources would be available to students.

Further, the amended language requires the resource providers to make the resource available to students for up to a two-year period of time. In addition, instructional materials may not be those that are designed primarily for administrative purposes, class management, course management or supervision-tools that must be provided by the District.

There were changes to the subchapter title and sections 59400, 59402, 59404, 59406, and 59408. The following is an analysis of those changes:

**Subchapter Title**

The title was modified to remove the words “and Other” and to read simply as “Instructional Materials.”

**Section 59400**

There were significant changes to this section including modifying the title to reflect the same changes as the subchapter title. Subdivision (a) was revised to remove the words “and other.”

There were three new subdivisions added, sections (b), (c) and (e).

Subdivision (b) addresses restrictions on instructional materials.
(b) Required instructional materials shall not include materials used or designed primarily for administrative purposes, class management, course management or supervision.

Subdivision (c) addresses the various options available to students regarding the length of time they may keep the materials and that they must be clearly informed of those time periods.

(c) Where instructional materials are available to a student temporarily through a license or access fee, the student shall be provided options at the time of purchase to maintain full access to the instructional materials for varying periods of time ranging from the length of the class up to at least two years. The terms of the license or access fee shall be provided to the student in a clear and understandable manner prior to purchase.

Subdivision (b) was renumbered to subdivision (d) and the words “and other” eliminated.

Subdivision (e) requires the Chancellor’s Office to adopt guidelines for districts implementing the regulations.

Section 59402

Subsection (a) was removed to eliminate the definition of “Instructional and other materials.” This subdivision received significant debate in the first meeting of the OMFAC in November. It was determined and agreed that the term “tangible” was problematic in today’s digital world and provided limitations and restrictions that were cumbersome.

Subdivision (b) was renumbered and modified to provide greater flexibility by the instructor and to remove restrictive language.

Subdivision (c) was renumbered and modified by adding the word “instructional” in four places.

Subdivision (d) was renumbered and modified to remove the words “and other” and to remove restrictive language.

Subdivision (e) was deleted because it defined “Tangible personal property” which was at the center of the discussion for subdivision (a) as noted earlier.

Section 59404

Section title change to remove the words “and Other”
Subdivision (a) was modified to remove the words “and other” to direct faculty to take reasonable steps to minimize cost to students.

Section 59406

Section was modified to remove the words “and other.”
**Section 59408**

Section was modified to remove the words “and other.”

**Recommendation**

The proposed regulations are presented to the Board of Governors for a first reading. The Board of Governors should hold a public hearing and consider any testimony which is offered. It is anticipated that the regulations will be presented to the Board for final action at its May 2012 meeting.

**Staff:** LeBaron Woodyard  
Dean, Academic Affairs
PROPOSED REVISIONS TO TITLE 5 REGULATIONS:
INSTRUCTIONAL MATERIALS

1. Subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

Subchapter 7. Instructional and Other Materials

2. Section 59400 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59400. Required Instructional and Other Materials.
(a) The governing board of a district may, consistent with the provisions of this subchapter, require students to provide instructional and other materials required for a credit or noncredit course, provided that such materials are of continuing value to a student outside of the classroom setting, and provided that such materials are not solely or exclusively available from the district.
(b) Required instructional materials shall not include materials used or designed primarily for administrative purposes, class management, course management or supervision.
(c) Where instructional materials are available to a student temporarily through a license or access fee, the student shall be provided options at the time of purchase to maintain full access to the instructional materials for varying periods of time ranging from the length of the class up to at least two years. The terms of the license or access fee shall be provided to the student in a clear and understandable manner prior to purchase.
(d) Except as specifically authorized or required in the Education Code, the governing board of a community college district shall not require a student to pay a fee for any instructional and other materials required for a credit or noncredit course.
(e) The Chancellor’s Office shall adopt guidelines for districts implementing this subchapter.


3. Section 59402 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59402. Definitions.
For the purposes of this subchapter the following definitions apply:
(a) “Instructional and other materials” means any tangible personal property which is owned or primarily controlled by an individual student.
(b) “Required instructional and other materials” means any instructional and other materials which a student must procure or possess as a condition of registration, enrollment or entry into a class; or any such material which the instructor determines is necessary to achieve the required objectives of a course which are to be accomplished under the supervision of an instructor during the class hours.

(c) “Solely or exclusively available from the district” means that the instructional material is not available except through the district, or that the district requires that the instructional material be purchased or procured from it. A material shall not be considered to be solely or exclusively available from the district if it is provided to the student at the district’s actual cost and:

1. the instructional material is otherwise generally available, but is provided solely or exclusively by the district for health and safety reasons; or
2. the instructional material is provided in lieu of other generally available but more expensive material which would otherwise be required.

(d) “Required instructional and other materials which are of continuing value outside of the classroom setting” are materials which can be taken from the classroom setting, and which are not wholly consumed, used up, or rendered valueless as they are applied in achieving the required objectives of a course which are to be accomplished under the supervision of an instructor during the class hours.

(e) “Tangible personal property” includes electronic data that the student may access during the class and store for personal use after the class in a manner comparable to the use available during the class.


4. Section 59404 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59404. District Policies and Regulations for Instructional and Other Materials.

(a) The governing board of a community college district which requires that students provide instructional or other materials for a course shall adopt policies or regulations, consistent with the provisions of this subchapter, which specify the conditions under which such materials will be required. These policies and regulations shall direct instructors to take reasonable steps to minimize the cost of instructional materials.

(b) The policies or regulations specified in subdivision (a) shall be published in each college catalog developed after the date of adoption.


5. Section 59406 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59406. Report to Chancellor.
The governing board of a community college district which prescribes required instructional and other materials for its courses shall respond to periodic surveys or inquiries of the Chancellor on the subject.


6. Section 59408 of subchapter 7 of chapter 10 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 59408. Violations of Subchapter.
The governing board of a district which prescribes required instructional and other materials in violation of this subchapter shall be deemed to have established a student fee not expressly established by law.