

# INSTRUCTIONAL MATERIALS REGULATIONS

May 7-8, 2012

## ACTION

Presentation: Barry Russell, Vice Chancellor, Academic Affairs Division

## Item 2.2

### 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.

### 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, Board of Governors members, Chancellor's Office staff and others.

The committee met twice, first on November 16, 2011, and again on December 15, 2011, to discuss existing statutes 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 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) meeting on January 20, 2012. SACC made recommendations to the proposed language. ETAC met on January 30, 2012, to review the modifications recommended by SACC and had extensive discussions with the General Counsel regarding aspects of the language and to provide its recommendations.

At its March 5, 2012, meeting, the Board of Governors held a public hearing and first reading regarding proposed changes to the instructional materials regulations pursuant to the 45-day notice published on February 23, 2012. During the public discussion of agenda item 2.1, the Board felt it was important that students not be required to purchase unnecessary instructional materials. Staff was directed to add the words "and ensure the necessity" to the text of proposed amendments to section 59404, subdivision (a). To that end, a 15-day re-notice was published on March 26, 2012, for public comment. The public comment period for both the original 45-day notice and the 15-day re-notice closed on April 13, 2012.

## **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 are beginning to select materials that are electronic in nature. It was determined that by deleting the word "tangible" from the discussion, highly effective electronic resources would be available to students.

Further, the limitation provided with the amended language restricts the resource providers to making the resource available 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 significant changes to the regulations recommended. 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 and ensure the necessity of instructional materials.

### ***Section 59406***

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

### ***Section 59408***

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

The public comment period for both the original 45-day notice and the 15-day re-notice closed at 5:00 pm on April 13, 2012. During the public comment period, the Board of Governors held a public hearing during their regular meeting on March 5, 2012. Comments and responses are provided on Attachment 2.

### **Recommended Action**

The Board of Governors is asked to adopt the following resolution:

#### *Be it Resolved*

The Board of Governors of the California Community Colleges, acting pursuant to Education Code sections 66700, 70901(c) and 70901.5, hereby:

- accepts the comments and proposed responses to the proposed regulatory action;
- approves the proposed regulation changes;
- Directs the Chancellor to file the regulations with the Secretary of State and submit the regulations to the Office of Administrative Law for printing upon receipt of an approved Economic and Fiscal Impact Statement from the Department of Finance;
- authorizes the Chancellor to take any necessary ministerial action to process these regulations; and
- adopts the regulations effective thirty days after filing with the Secretary of State and submission of the regulations to the Office of Administrative Law.

*Staff: LeBaron Woodyard, Dean, Academic Affairs*

## ATTACHMENT 1

### BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

#### 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.

~~(b)~~(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.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

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)(a) "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 those required objectives of a course ~~which are to be accomplished under the supervision of an instructor during class hours.~~~~

~~(c)(b) "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)(c) "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.~~

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

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 and ensure the necessity 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.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

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.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

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.

Note: Authority cited: Sections 66700, 70901 and 76365, Education Code. Reference: Sections 70901, 70902 and 76365, Education Code.

## ATTACHMENT 2

### Summary and Response to Comments Received During the Initial Notice Period of February 23, 2012, through April 13, 2012, Inclusive

Official Notice of proposed changes to the California Code of Regulations, title 5, regarding Instructional Material Regulations was published on February 23, 2012. The original proposed text was made available for public comment for at least 45 days from February 23, 2012, through April 13, 2012. The Notice specified the process to comment on the proposed changes. During the public discussion of agenda item 2.1, staff was directed by the Board to add the words “and ensure the necessity” to the text of proposed amendments to section 59404, subdivision (a). To that end, a 15-day renote was published on March 26, 2012, for public comment. One written comments was received during the comment period. A public hearing was held during the Board of Governors Meeting on March 5, 2012, at the Chancellor’s Office. Comments from two people were heard. Pursuant to Standing Order 206, subdivision (b)(3), the Chancellor’s Office has summarized all written and oral comments and Proposed Responses below for adoption by the Board.

#### Comments Received During the Public Hearing

**Steve Rhoades (Association of American Publishers):** During the public comment period on March 7, 2012, he requested a six to twelve month delay in implementation of the regulations to work on changes that will be required. He also stated that it is possible to purchase just one chapter of a book and he supported the idea of bulk buying through college foundations.

**Response:** A period of time for adjustment to the new regulation is a reasonable request. As a practical matter, the regulations would not be adopted by the Board of Governors until May, 2012, and then must be approved by the Department of Finance and sent to the Secretary of State. This process would likely be completed by the fall of 2012. By that time, the textbook ordering process for the spring 2013 semester would already be well under way. Therefore, the regulations would not be fully effective until summer or fall 2013. This should provide ample time for publishers and colleges to adapt to the new regulations.

**Michelle Pilati (President, Academic Senate California Community Colleges):** During the public comment period on March 7, 2012, she expressed support for the regulations. She also expressed a willingness to work on broader issues relating to textbook affordability.

**Response:** Agree.

### **Written Comments Received During the Public Comment Period**

**Don Newton (City College of San Francisco Bookstores):** He offered several comments.

1. Faculty are concerned that the new regulations will affect materials they currently use.
2. Bookstores need to determine how to provide the added access time.
3. Some elements of the product could not be available after the class ends.
4. Suggests adding a specific effective date of classes beginning after March 1, 2013.

**Response:**

1. The regulation should not affect materials currently in use. The regulation only broadens the materials that may be classified as required instructional materials.
2. The specifics of how the materials will be marketed will be determined by the normal processes developed between bookstores and providers of instructional materials.
3. It is not expected that elements such as faculty-student interaction will be ongoing. The appropriate analogy is to a traditional class in which there is no expectation of ongoing communications between faculty member and student after the class has ended.
4. As explained above in the response to Steve Rhoades, it is expected that the regulations will not be enforced prior to summer 2013 classes.