





The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS
DATE: March 4, 2013

SUBJECT: Compliance with the Fifty Percent Law		Item Number: 2.1	
		Attachment: Yes	
CATEGORY:	Fiscal Policy	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Dan Troy, Vice Chancellor	Consent/Routine	
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	X
		Information	

ISSUE: This item presents requests from three community college districts for exemption from the Fifty Percent Law pursuant to Education Code section 84362 and California Code of Regulations (CCR) title 5, sections 59200-10.

RECOMMENDATION: The Board grants one-time full exemptions to Lake Tahoe Community College District, Palo Verde Community College District, and West Kern Community College District (CCD). The districts shall also submit a plan to the Chancellor's Office by June 30, 2013 stating how it will comply with the requirements of the Fifty Percent Law in the future.

BACKGROUND: Three community college districts did not meet the basic requirements of the Fifty Percent Law for fiscal year 2011-12. The districts are Lake Tahoe CCD, Palo Verde CCD, and West Kern CCD. All three districts applied for an exemption per CCR title 5, section 59206.

Education Code section 84362, commonly known as the Fifty Percent Law, requires each community college district to spend at least half of its Current Expense of Education each fiscal year for salaries and benefits of classroom instructors.

Current Expense of Education generally includes the unrestricted general fund expenditures of a community college district. Excluded from the Current Expense of Education are expenditures for student transportation, food services, community services, lease agreements for plant and

equipment, and other costs specified in law and regulations. Amounts expended from State Lottery proceeds are excluded, except for expenditures for instructional salaries.

Salaries of Classroom Instructors are described in the California Community Colleges Budget and Accounting Manual as “Expenditures for the full or prorated portions of salaries of all employees in contract or regular faculty positions.” This includes the following expenditures:

- Prorated salaries of contract or regular instructors working a reduced load or whose assignment includes both instructional and non-instructional duties.
- Prorated salaries of administrators having a teaching assignment as part of their regular work assignment.
- Salaries of instructors on sabbatical leave.
- Extra duty days or assignments paid as part of an instructor’s regular salary.
- Salaries of instructors with a dual-employment relationship, under instructional service agreements.
- Instructional aides employed to assist instructors in classroom instruction tasks during any portion of their duties.
- Applicable staff benefits.

Administering the Law

The responsibility for administering the Fifty Percent Law resides with the Chancellor and the Board of Governors. Every year, exemption application forms and applicable due dates are distributed to all districts, and the annual financial and budget reports of all districts are monitored for compliance with Education Code section 84362 and California Code of Regulations (CCR) title 5, sections 59200-10. Upon receipt of an application for exemption, Chancellor’s Office staff determines whether applicable procedures have been followed, analyze supporting documentation and data, and make recommendations to the Chancellor for presentation to the Board. An independent assessment of each district’s computation of compliance is also a requirement of the annual audits conducted by contracted independent audit firms pursuant to Education Code section 84040.

Districts not achieving the required 50 percent and failing to apply for an exemption, or failing to complete the application process, are still subject to the terms and conditions of the compliance requirements in the regulations. However, these districts are not eligible for consideration of an exemption and also must retire any deficiency within the same timeframe (CCR title 5, section 59208(c)) as districts with a partial approval or denial of an exemption application.

Basis for Exemption

A district may request exemption from the Fifty Percent Law if Salaries of Classroom Instructors are higher than comparable districts and/or if compliance would have resulted in serious hardship. The district declares on the exemption application the basis for its exemption request. Districts may choose any one or all of the categories for exemption.

CCR title 5, section 59211 specifies that the Board of Governors has the responsibility to deny, grant or grant in part a district's application after review of all the supporting documentation including the Chancellor's Office recommendation. The bases for exemption are:

COMPARABLE SALARIES: A district cannot be required to pay Salaries of Classroom Instructors above those paid by its cohort of similar sized districts. Salaries higher than the average of comparable districts are eligible for an exemption under CCR title 5, sections 59204(e) and (f).

SERIOUS HARDSHIP: Includes five criteria as defined in CCR title 5, sections 59204(c)-(f) and 59204.1, and as summarized below:

1. **Unable to Discharge Fiscal Liabilities.** Conformance with the Fifty Percent Law would have resulted in the district's inability to discharge financial liabilities.
2. **Infusion of New Moneys.** The first year of infusion of new moneys would have resulted in the district's inability to comply with the requirements of the Fifty Percent Law. The percentage is recalculated without including these new moneys in order to determine if the district would have been in compliance.
3. **Unanticipated Expenditures. Unanticipated, unbudgeted, and necessary expenditures** would result in the district's inability to comply with the Fifty Percent Law. Litigation, arbitration, costs of energy, insurance and security are among some of the items to be considered.
4. **Unexempted Deficiency.** Districts with an unexempted deficiency from a prior cycle may expend funds for other than Salaries of Classroom Instructors but count the expenditures as instructional after reaching an agreement with faculty representatives that these expenditures, as itemized in CCR title 5, section 59213(f), are necessary.
5. **Categorical Program Backfill.** This Supplemental Exemption for "Serious Hardship" is provided for each year during the periods 2009-10 through 2012-13 when the year of deficiency would have likely resulted in a substantial reduction of funding for categorical programs as compared to the level of funding for categorical programs in 2008-09. Such a reduction would have had a detrimental impact on those programs and a detrimental impact on student success.

The Chancellor's Office analysis also considers any written statements of opposition received from faculty by December 29 per CCR title 5, section 59209. If so requested, the Chancellor's Office

provides for an exchange of written statements and a hearing in order to allow both parties to present facts about the exemption application. No such faculty opposition statements or request for a hearing at the Chancellor's Office have been received for 2011-12.

Compliance

Under the regulations, compliance takes up to three years after the deficiency is first identified.

1. **Fiscal Year 1**—(2011-12): The year in which the deficiency occurred.
2. **Fiscal Year 2**—(2012-13): The year during which the Chancellor's Office staff evaluates applications for exemption and the district is to begin to resolve the deficiency from 2011-12. The Board of Governors makes its decision on an exemption request at the March meeting. The Chancellor requires any district not granted a full exemption to prepare a plan for spending the unexempted deficiency on Salaries of Classroom Instructors during the next fiscal year (2012-13). The district must submit the plan by June 30, 2013. During the time between the Board of Governors' decision to not grant a full exemption and June 30, 2013, the Chancellor will direct the district's county office of education to withhold funds from the district the amount of any unexempted deficiency. Upon receipt of the June 30 plan, these funds will be released to the district. If the district expends Salaries of Classroom Instructors above 50 percent during 2012-13, the amount will reduce the unexempted deficiency.
3. **Fiscal Year 3**—(2013-14): The year in which the district recovers, by June 30, 2014, any remaining unexempted deficiency from 2011-12. This recovery includes any amount expended for Salaries of Classroom Instructors above 50 percent of current expense of education during fiscal years 2012-13.
4. **Fiscal Year 4**—(2014-15): Districts not reporting expenditures above 50 percent sufficient to cover an unexempted deficiency will have apportionment reduced in an amount equal to the remaining unexempted deficiency from 2011-12. Any amount withheld is redistributed through the apportionment process by the Chancellor's Office to all districts statewide.

Analysis of Districts

Three community college districts did not meet the requirements of the Fifty Percent Law for fiscal year 2011-12 based on the annual financial and budget report (CCFS 311). All of these districts, Lake Tahoe CCD, Palo Verde CCD, and West Kern CCD, applied for exemption and completed the required procedure.

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ATTACHMENT A
Analysis of Lake Tahoe CCD
Application for Exemption from the Fifty Percent Law
2011-12 Fiscal Year

Deficiency Calculation

1.	2011-12 Current Expense of Education (CEE)	\$11,253,447
2.	2011-12 Fifty Percent Expenditure Requirement	\$ 5,626,724
3.	Actual Amount Expended	\$ 5,496,136
4.	Total 2011-12 Deficiency	\$ 131,012
5.	Amount of exemption application	\$ 131,012
6.	Amount Eligible for Exemption	\$ 131,012
7.	Amount Not Eligible for Exemption	\$ 0
8.	Unrestricted General Fund Ending Balance June 30, 2012	\$ 2,764,023

Analysis

During 2011-12 the Lake Tahoe CCD expended only **48.8 percent** of its current expense of education on Salaries of Classroom Instructors, and is seeking an exemption of its deficiency of **\$131,012**. The district contends that it qualifies for “serious hardship” pursuant to CCR title 5 section 59204.1, because it expended **\$131,012** in general fund monies to backfill categorical programs in 2011-12.

The Chancellor’s Office determined that the district’s request for an exemption for **\$131,012** in categorical backfill expenditures is warranted.

As reported on the district’s Annual Financial and Budget Report (CCFS-311), the district’s Ending Balance in its unrestricted general fund as of June 30, 2012 was \$2,764,023 or 21%. When taking the following reserve commitments into consideration, the district’s unrestricted general fund ending balance nets to \$1,493,085 or 10.46%:

- Reserve for workload reduction: \$630,000
- Retiree Incentive \$439,848
- Technology/Infrastructure Costs \$201,090

In accordance with title 5, section 59208, the Lake Tahoe CCD local governing board held a public hearing on December 11, 2012 to determine the basis for the district’s application for exemption for \$130,012 in general fund moneys expended to backfill categorical programs in 2011-12 as compared to the level of funding for categorical programs in 2008-09 would result in “serious hardship” to the district pursuant to CCR title 5, section 59204.1. District faculty groups are unopposed to this exemption request.

ATTACHMENT B
Analysis of Palo Verde CCD
Compliance with the Fifty Percent Law
2011-12 Fiscal Year

Deficiency Calculation

1.	2011-12 Current Expense of Education (CEE)	\$ 9,017,569
2.	2011-12 Fifty Percent Expenditure Requirement	\$ 4,508,784
3.	Actual Amount Expended	\$ 4,226,739
4.	Total 2011-12 Deficiency	\$ 282,045
5.	Amount of district exemption request	\$ 282,045
6.	Amount Eligible for Exemption	\$ 282,045
7.	Amount Not Eligible for Exemption	\$ 0
8.	Unrestricted General Fund Ending Balance June 30, 2012	\$ 1,101,482

Analysis

During 2011-12, Palo Verde CCD spent only **49.4 percent** of its current expense of education on salaries and benefits of classroom instructors, and is seeking an exemption of its deficiency of **\$282,045**. The District contends that it qualifies for section 59204(c) because of \$282,045 in unanticipated, unbudgeted and necessary expenditures that occurred in 2011-12 would result in serious hardship" pursuant to CCR title 5 section 59204.1.

The College experienced a series of unanticipated and unbudgeted, but necessary costs associated with personnel incentive and other payouts, unanticipated lawsuits and legal claims as follows:

1) One of the incentive plans offered in the spring 2012 was a Health Benefits Opt-Out program in which employees who, with proof of insurance, were provided \$6,000 to opt-out of the college's medical plan. This was an unbudgeted, unanticipated expense that cost the College **\$118,200** which negatively impacted the Fifty Percent Law calculation.

2) To address a sensitive budget issue, the College reduced the number of the non- instructional staff by offering voluntary resignation and workforce reduction incentives in lieu of layoffs. The unanticipated, unbudgeted vacation payouts (paid to those who participated in the voluntary resignation and workforce reduction programs), resulted in necessary expenditures of at least **\$93,713** which negatively impacted the Fifty Percent Law calculation.

3) Consistent with the previously described personnel incentive plan options, many of the incentive agreements in lieu of layoff included salary continuation for a period of time after departure. When one of the vice presidents accepted the Resignation Incentive Plan, the costs associated with the payout were budgeted but the additional costs of **\$36,171** incurred when an Interim Vice President was hired for the remainder of the spring semester were unbudgeted and

unanticipated but necessary to maintain program integrity and which negatively impacted the Fifty Percent Law calculation.

4) When the bonding company for the construction of the Fine and Performing Arts Center went bankrupt (in addition to the construction company's bankruptcy the prior year), vendors impacted by the first bankruptcy no longer could count on the bonding company to cover their costs and therefore filed claim against the College, causing additional costs of **\$33,961** in unanticipated legal fees associated with settling these additional claims which negatively impacted the Fifty Percent Law calculation.

As reported on the Annual Financial and Budget Report (CCFS-311), the district's unrestricted general fund ending balance as of June 30, 2012 was **\$1,101,482 or 10 percent.**

In accordance with CCR title 5, section 59208, the Palo Verde CCD local governing board held a public hearing on November 13, 2012 to justify the district's application for exemption for \$282,045. The Palo Verde Faculty Association did not oppose the districts application for exemption.

ATTACHMENT C
Analysis of West Kern CCD
Compliance with the Fifty Percent Law
2011-12 Fiscal Year

Deficiency Calculation

1.	2011-12 Current Expense of Education (CEE)	\$15,662,124
2.	2011-12 Fifty Percent Expenditure Requirement	\$ 7,831,062
3.	Actual Amount Expended	\$ 7,735,072
4.	Total 2011-12 Deficiency	\$ 95,990
5.	Amount of district exemption request	\$ 95,990
6.	Amount Eligible for Exemption	\$ 95,990
7.	Amount Not Eligible for Exemption	\$ 0
8.	Unrestricted General Fund Ending Balance June 30, 2011	\$ 3,585,198

Analysis

During 2011-12 West Kern CCD spent only **49.4 percent** of its current expense of education on Salaries of Classroom Instructors, and is seeking an exemption of its deficiency of **\$95,990**. The district contends that it qualifies for “serious hardship” pursuant to CCR title 5 section 59204(e), because the district pays Salaries of Classroom Instructors higher than the average of comparable districts.

As reported on the district’s Annual Financial and Budget Report (CCFS-311), the district’s Ending Balance in its unrestricted general fund as of June 30, 2012 was **\$3,585,198 or 20 percent**. When taking the following reserve commitments into consideration, the district’s unrestricted general fund ending balance nets to \$2,811,198 or 15.68%:

- GASB 45 reserve \$574,000
- Banner ERP Maintenance \$200,000

Based on analysis of the salaries of five cohort colleges, West Kern Community College District salaries **are** greater than the average of the 5 comparable districts.

DISTRICT	SCI	FTES
West Kern Community College District	\$7,735,072	2,531
Barstow Community College District	\$5,852,123	2,172
Copper Mountain Community College District	\$5,062,271	1,709
Lassen Community College District	\$4,989,796	1,985
Mendocino Community College District	\$9,044,270	3,007
Feather River Community College District	\$4,276,577	1,755

Average of Cohort	\$5,845,007	2,126
Average Cohort Salaries per FTES:	$\$5,845,007 / 2126 = \$2,749$	
WKCCD Average Salaries per FTES:	$\$7,735,072 / 2351 = \$3,056$	
Difference between Cohort and WKCCD:	$\$3,056 - \$2,749 = \$307/\text{FTES}$	
Difference multiplied by WKCCD FTES:	$\$307 \times 2531 = \$777,017$	
Exemption Amount Requested	\$95,990	

In accordance with title 5, section 59208, the West Kern CCD local governing board held a public hearing on November 8, 2012 to determine the basis for the district's application for exemption. The Taft College Faculty Association did not oppose the districts application for exemption.