




The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: November 12-13, 2013

SUBJECT: Revision of title 5 Regulations to Authorize Appointment of a Special Trustee		Item Number: 1.5	
		Attachment: Yes	
CATEGORY:	Legal	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Steven Bruckman, Executive Vice Chancellor	Consent/Routine	X
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	
		Information	

ISSUE: On July 8, 2013, the Board of Governors adopted an amendment to title 5, section 58312, as an emergency regulation. The regulation expanded the circumstances under which the board could appoint a trustee to include a case in which a college is in danger of losing accreditation. Emergency regulations expire after 180 days. At the September, 2013 board meeting, the Board of Governors received the amendment for first reading as a permanent regulation. This item is presented for a second reading and Board of Governors consideration to adopt the regulation as permanent.

BACKGROUND: On July 3, 2013, City College of San Francisco was notified by the Accrediting Commission for Community and Junior Colleges that its accredited status was being terminated. Because accredited status is a requirement for receipt of state apportionment funds, loss of accreditation would have a devastating fiscal impact on the finances of the San Francisco Community College District leading to bankruptcy and closure. It would also create a tremendous hardship for current and prospective students of one of the largest community colleges in the United States. The Board of Governors adopted emergency title 5 regulations to add loss of accreditation as a basis for the appointment of a special trustee of a community college district. The temporary nature of the emergency regulations necessitates this regulatory action and hearing. The board held a first reading and public hearing on September 9, 2013.

RECOMMENDED ACTION: It is recommended that the Board of Governors 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 response 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 unless the Department of Finance determines the regulations would create a state-mandated local program cost and is unable to certify to the Board of Governors and the Legislature that a source of funds is available to reimburse that cost (see Education Code section 70901.5(a)(6));
- 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.

The proposed regulations are presented to the Board of Governors for approval and adoption. The Board of Governors held a public hearing in September and has responded to comments.

ANALYSIS: Title 5, sections 58310 to 58316, address district financial requirements and provide the Board of Governors with processes and procedures to support districts in financial duress. For districts facing the most serious challenges, sections 58310 and 58312 authorize the appointment of a special trustee to assume management and control of the district. Section 58312 provides that a special trustee may be appointed if the chancellor determines that the district's plans to remedy the situation are inadequate to solve the financial problems or to implement the principles of sound financial management.

These regulations were most recently amended in 2004 to address problems faced by the Compton Community College District. The regulations, as currently written, could support the appointment of a special trustee at City College of San Francisco because the college has demonstrated that it is unable to solve its financial problems and implement principles of sound financial management. However, because the circumstances facing City College of San Francisco are different than those faced by Compton Community College District, it would be appropriate to amend the regulations to ensure that the Board of Governors has clear authority to support the appointment of a special trustee at City College of San Francisco. It is important that constituent groups and others associated with City College of San Francisco clearly recognize the authority of the Board of Governors in this very difficult period.

The proposed amendments to section 58312 specifically authorize the Board of Governors to appoint a special trustee with full power to assume management and control of a district if a college within that district is in imminent jeopardy of losing its accreditation as this would result in fiscal collapse and closure of the college. This regulation would provide the Board of Governors and

the chancellor with clear authority to take the steps necessary, including the appointment of a special trustee to assume management and control of the district.

If a trustee with these powers is appointed, the trustee would effectively replace the elected local board of trustees.

The Procedures and Standing Orders of the Board of Governors control the process for the adoption of title 5 regulations by the Board of Governors. In most cases, regulations are presented to the board for a first reading followed by a 45 day public comment period and then the board is asked to adopt the regulations at a second meeting. This is followed by a review by the Department of Finance. The entire process often takes six months or longer. However, the Procedures and Standing Orders of the Board of Governors section 206(d) provide an emergency exception. If the Board of Governors makes a finding that regulatory action is necessary for immediate preservation of the public peace, health and safety or general welfare, the action may be adopted immediately as an emergency action.

A regulation adopted as an emergency action remains in effect for a period of not more than 180 days, requiring the board to readopt the regulation using the normal process to maintain it permanently. This mechanism was used to allow for the appointment of a trustee at City College of San Francisco. The regulation was brought back to the board for first reading in September and now action in November in order to maintain the amended regulation.

The proposed regulation changes are included as attachment 1.

At the September 9, 2013, board meeting, the Board of Governors held a first reading and received public comments. See attachment 2.

ATTACHMENT 1

BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES PROPOSED REVISIONS TO TITLE 5 REGULATIONS: Inadequate Plans by District or Failure to Implement Plans; Authorized Actions by the Chancellor

1. Section 58312 of subchapter 4, of chapter 9 of division 6 of title 5 of the California Code of Regulations is amended to read:

§ 58312. Inadequate Plans by District or Failure to Implement Plans; Authorized Actions by the Chancellor.

If the Chancellor determines that the district's plans prepared and adopted pursuant to section 58310 are inadequate to solve the financial problems or to implement the principles of sound fiscal management, or if the district substantially fails to implement the plans, or if a college operated by the district is in imminent jeopardy of losing its accreditation which would create severe fiscal problems, the Chancellor shall have the authority to take any of the following actions. The Chancellor should first utilize measures which minimize interference with normal district operation, unless he or she determines that acting otherwise is necessary to prevent the worsening of fiscal conditions at the district.

(a) Conduct a comprehensive management review of the district and its educational programs and an audit of the financial condition of the district. The Chancellor may also contract for, or request another appropriate agency to conduct, the reviews and audit or require the district, at the expense of the district, to contract for the reviews and audit. The terms and conditions of the contract and the final selection of a contractor shall be subject to the written approval of the Chancellor.

(b) Direct the district to amend and readopt the fiscal and educational plans prepared pursuant to section 58310 based on the findings of the comprehensive audits.

(c) Review and monitor the implementation of the plans and direct the district to make any further modifications to the fiscal and educational plans he or she deems necessary for the district's achievement of fiscal stability.

(d) Appoint or assign a special trustee at district expense for the period of time necessary for the district to achieve fiscal stability or solvency, ~~or to implement the principles of sound fiscal management~~, or to maintain the accredited status of a college or to recover accredited status if it has been terminated. The Chancellor shall establish benchmarks that indicate the presence of local capacity to manage fiscal duties. The special trustee shall have recognized expertise in finance, and may, with the approval of the Chancellor, employ on a short-term basis any staff necessary to assist the special trustee. The Chancellor shall determine and specify in writing the duties of the special trustee, which may include, but are not limited to, any or all of the following:

(1) Reviewing and monitoring the plans, reports, and other financial material required under section 58310 and this section.

(2) Requiring any further modifications to the fiscal and educational plans which he or she deems necessary.

(3) Determining district spending levels and priorities to further the district's achievement of fiscal stability.

(4) Approving or disapproving actions of the district which affect or relate to the implementation of the fiscal and educational plans.

(e) If the Chancellor determines that further efforts to have the district modify or implement the plans would be futile, the Chancellor may, with the approval of the Board of Governors, also authorize a special trustee appointed pursuant to subdivision (d) to assume management and control of the district, including assumption of the legal rights, powers and duties of the governing board of the district to the full extent deemed necessary by the Board of Governors in order to achieve fiscal stability or solvency, ~~or to implement the principles of sound fiscal management set forth in section 58311, or to maintain the accredited status of a college or recover accredited status if it has been terminated.~~ The Chancellor may authorize the special trustee to exercise such powers as are approved by the Board of Governors for a period of no more than one year, unless the Board of Governors approves one or more one-year extensions. The exercise by the special trustee of such powers shall be subject to all legal requirements applicable to the district. The governing board of the district may not exercise any authority so assumed.

(f) The Chancellor may require the district, at district expense, to pay all costs incurred in performing any of the services described in this section. This may include requiring the district to employ staff or contract for services necessary to assist the special trustee, to compensate the special trustee for his or her services and for any expenses or liabilities that he or she may incur, to insure the special trustee, and to defend, indemnify and hold harmless the special trustee, the Office of the Chancellor or its employees and the state for any liability arising out of or in connection with the conduct of the district or its governing board prior to the appointment of the special trustee. Alternatively, or to the additional extent necessary, the Chancellor may withhold funds necessary to pay for any or all such costs incurred in performing the services described herein from funding that would otherwise have been apportioned to the district under Section B of the State School Fund.

NOTE: Authority cited: Sections 66700, 70901 and 84040, Education Code. Reference: Section 70901, Education Code.

ATTACHMENT 2

Summary and Response to Comments Received During the Initial Notice Period of August 29, 2013, through October 17, 2013, Inclusive

Official Notice of proposed changes to the California Code of Regulations, title 5, to authorize appointment of a Special Trustee was published on August 29, 2013. The original proposed text was made available for public comment for at least 45 days from August 29, 2013, through October 17, 2013. No written comments were received during the comment period. A public hearing was held during the Board of Governors meeting on September 9, 2013, at the West Hills Community College District, Lemoore campus. Comments from two people were heard. Pursuant to Standing Order 206, subdivision (b)(3), the Chancellor's Office has summarized the comments and proposed responses below for adoption by the board.

Comments Received During the Public Hearing

Brad Reynolds, representing Community College Association/California Teachers Association:

Mr. Reynolds expressed concerns about replacing elected boards with someone else who was not chosen through the democratic process.

Lacy Barnes, California Federation of Teachers:

Mr. Barnes acknowledged that proposed language is an improvement, but it doesn't resolve issues CFT has mentioned in the past. Regulations are overly broad and giving power to the Board of Governors or Chancellor's Office to take away locally elected board authority is improper and may not align with legal practice. CFT continues to oppose rewritten regulations.

Response:

The amendments are not a significant expansion of the board's authority. Loss of accreditation would result in closure of the college. Because of the impact closure would have on students, the community, and the local economy, it is appropriate for the board to be able to intervene in this way. The authority exists only if loss of accreditation is imminent. The Board of Governors has exercised its authority to appoint a trustee only once before. It is expected that it will continue to be an exceptionally rare occurrence.