




The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: September 9-10, 2013

SUBJECT: Open Licensing for Chancellor's Office Grants		Item Number: 2.1	
		Attachment: Yes	
CATEGORY:	Academic Affairs	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Barry Russell, Vice Chancellor	Consent/Routine	
		First Reading	
Approved for Consideration:	 Brice W. Harris, Chancellor	Action	X
		Information	

ISSUE: This item presents the proposed changes to sections 318 and 319 of the Procedures and Standing Order of the Board of Governors of the California Community Colleges.

BACKGROUND: Creative Commons CC BY (CC BY) is a copyright license that grants permission to the public to reproduce, distribute, perform, display or adapt the licensed materials for any purpose so long as the user gives attribution to the author or as otherwise directed by the copyright holder.

RECOMMENDED ACTION: It is recommended that the Board of Governors amend section 318 and 319 of the Procedures and Standing Orders of the Board of Governors to include Creative Commons CC BY licensing on California Community Colleges Chancellor's Office contracts and grants.

ANALYSIS: Currently, ARTICLE II of the Chancellor’s Office Grant Agreement, Standard Legal Terms and Conditions (Revision 04/04/2008), #18b states “The copyright for all materials first produced as a result of this Work for Hire agreement shall belong to the Chancellor’s Office.” This language is currently included in all requests for applications (RFAs) from the Chancellor’s Office.

Why require CC BY?

Creators retain copyright. Creative Commons (CC) licenses are built on top of and encourage respect for copyright and copyright holders and are non-exclusive. Requiring release under CC BY maximizes the public benefit of the funding dollars expended, and at the same time ensures the creator retains copyright and the option to offer the work under other terms that benefit their particular business model or educational mission.

Innovative and entrepreneurial uses of funded materials are enabled. CC BY gives individuals, nonprofits, and businesses permission to use and build upon material created with public funds, so long as the creator is credited. Innovative use of these materials may be made by any teacher, parent, and school district, nationwide and beyond. The materials will be available for reuse and value-add by creative entrepreneurs, education start-ups, and traditional commercial businesses.

Compatibility with established policy and practice for open educational resources. Publicly funded educational materials released under CC BY can be easily and seamlessly used in the many systems where CC licenses are already embraced, e.g., OpenCourseWare, at dozens of major universities, innovative K-12 and community college initiatives in states like Virginia and Washington, education businesses such as Boundless and Pearson, and with leading foundations that support educational materials such as Hewlett and Gates.

Global standard. CC licenses have been adopted as the institutional and governmental standard for key educational initiatives around the world, and similarly for public sector information, scientific publishing, and works curated by cultural heritage institutions such as national museums and libraries. The CC licenses are the legal standard for collaboration on the web, used by businesses and communities from Microsoft to Wikipedia. CC licenses embody established technical standards that allow teachers, schools, publishers, and others to find openly licensed materials using search engines such as Google.

Maximizes impact. In order to be used dependably and reliably by teachers, businesses, or institutions that desire to innovate, publicly funded materials must be clearly licensed and marked as such in order to modify the default copyright rule that “all rights are reserved.” CC BY is the gold standard for doing so, permitting publicly funded materials to be dependably leveraged and used alongside similarly licensed content and in conjunction with existing initiatives at community colleges and elsewhere.

The public deserves free access to educational materials it funds. This fundamental principle has been validated and embraced through initiatives such as the National Institute of Health’s Public Access Policy and the US Department of Labor Trade Adjustment Assistance Community College and Career Training grants. The public should not be required to pay twice (or more) to access and use educational materials, first via the funding of the research and development of educational

resources using their tax dollars, and then again when they purchase materials like textbooks they helped fund or when they pay a license fee to a grant recipient to use the materials. Requiring CC BY is axiomatic and ensures that educational materials developed with taxpayer funds are accessible and usable by those who have paid for their creation.

Proposed changes to the Procedures and Standing Orders of the Board of Governors:

Chapter 3. Standing Orders of the Board of Governors of the California Community Colleges
Article 2. Operation of the Chancellor’s Office

Add to #318. Contracts.

(e) As a condition of receiving funding from the California Community College Chancellor’s Office, educational materials created using those funds should be made available by the grantee under the Creative Commons Attribution License (CC BY) with the following symbol included:



Add to #319. Grants.

After (f) As a condition of receiving funding from the California Community College Chancellor’s Office, educational materials created using those funds should be made available by the grantee under the Creative Commons Attribution License (CC BY) with the following symbol included:



Add to ARTICLE II, Standard Legal Terms and Conditions (Revision 04/04/2008), #18

As a condition of receiving funding from the California Community College Chancellor’s Office, educational materials created using those funds should be made available by the grantee under the Creative Commons Attribution License (CC BY) with the following symbol included:



ATTACHMENT 1

Chapter 3. Standing Orders of the Board of Governors of the California Community Colleges, Article 2. Operation of the Chancellor's Office, Numbers 318 and 319

http://extranet.cccco.edu/Portals/1/ExecutiveOffice/Board/2013_agendas/january/updated_procedures_standing_orders_2013.pdf

318. Contracts.

(a) Except as provided in subsection (b), whenever the power to contract is invested in the Board, or when, in the judgment of the Chancellor, such contracts are expressly or impliedly authorized to fulfill responsibilities or authorities vested in the Office of the Chancellor, the Chancellor is authorized in the name of the Board of Governors to enter into such contracts.

(b) The Chancellor shall secure Board approval before entering into any contract:

(1) In excess of \$100,000; or

(2) Over three years in duration; or

(3) With respect to consulting services, in excess of \$50,000.

The requirement for Board approval shall apply to any amendment of a contract which results in the original contract exceeding the specified limits, as well as the amendment of a contract where the amendment itself exceeds the specified limits. Under circumstances when the need to contract was not foreseeable, and when delaying approval of the contract until the next Board meeting would jeopardize the contract or frustrate its purpose, the Chancellor shall have the authority to enter into contracts in excess of the limits specified in this subsection. Before entering into such contracts, however, the Chancellor shall consult with the President of the Board.

(c) In securing the approval of contracts by the Board pursuant to subsection (b), the Chancellor shall apply the following procedures:

(1) In determining the nature, extent and need for any such contract, the Chancellor shall provide a summary of the Request for Proposal (RFP), Invitation for Bid (IFB), or other summary of the purpose and need for a contract to the Board of Governors prior to publicly releasing any such RFP or IFB, or prior to making any informal commitment to contract. The Chancellor may proceed with the release of the RFP, IFB, or other contract negotiations, unless the Board President, with or without the advice of any appropriate Board Committee designated by the President, directs the Chancellor to withhold action within a 10 day period from the date the summary is provided.

(2) In developing language for such contracts, the Chancellor shall include a provision which allows any aggrieved bidder on an RFP or IFB to protest the awarding of a contract to the Chancellor. The Chancellor shall inform the Board of any such protests, including the results of such protests. This remedy shall be in addition to the bidder's right to protest the matter to the Department of General Services.

(3) The Chancellor shall ensure that each panel of evaluators who score proposals is made up of staff from more than one division in the Chancellor's Office, including outside evaluators as appropriate; and the Chancellor shall take such other steps as necessary to ensure that evaluations and scoring are objective and fair.

(4) In requesting approval of said contracts, the Chancellor shall, at the time of distributing each regular meeting agenda to the Board of Governors, include a summary of contracts for Board approval. The summary for each contract shall indicate: the purpose of the contract; the amount of the contract; the time for performance of the contract, including whether it was advertised as a multi-year contract; the number of proposals received or whether the contract is a sole source contract; the number of proposals which met the minimum score for cost opening; and the party awarded the contract. The provisions of subparagraphs (1) through (3) above shall not apply to interagency agreements with other state agencies, and other agreements necessary for the agency to receive public funds.

(d) The authorization contained in subsection (a) includes agreements, leases, contracts, and other documents, including but not limited to: service agreements, insurance agreements, fiscal, budgetary, and personnel documents, requests, contracts for the purchase of apparatus, furniture, equipment, supplies and books, as well as contracts entered into as necessary to receive federal funds allocated to the California Community Colleges, all within the limits of fiscal ability and sound budgetary controls and subject to such policies as may be established by the Board. (EC § 70901(b)(5).)

(e) As a condition of receiving funding from the California Community College Chancellor's Office, educational materials created using those funds should be made available by the grantee under the Creative Commons Attribution License (CC BY) with the following symbol included.



319. Grants.

(a) Except as provided in subsection (b), whenever the power to enter into a grant is invested in the Board, or when, in the judgment of the Chancellor, a grant is expressly or impliedly authorized to fulfill responsibilities or authorities vested in the Office of the Chancellor, the Chancellor shall have the authority to enter into such grants.

(b) The Chancellor shall secure Board approval before entering into any grant:

- (1) In excess of \$100,000; or
- (2) Over three years in duration.

The requirement for Board approval shall apply to any amendment of a grant which results in the original grant exceeding the specified limits, as well as the amendment of a grant where the amendment itself exceeds the specified limits. Under circumstances when the need to enter into a grant was not foreseeable, and when delaying approval of the grant until the next Board meeting would jeopardize the grant or frustrate its purpose, the Chancellor shall have the authority to enter into grants in excess of the limits specified in this subsection. Before entering into such grants, however, the Chancellor shall consult with the President of the Board.

(c) Prior to submitting grants to the Board for approval pursuant to subsection (b), the Chancellor shall either:

- (1) present to the Board for its review and approval an expenditure plan outlining the nature, extent and need for any such grants; or
- (2) provide a summary of the Request for Application (RFA) or other summary of the purpose and need for a grant to the Board of Governors prior to publicly releasing any such RFA or prior to making any informal commitment to award a grant. The Chancellor may proceed with the release of the RFA unless the Board President, with or without the advice of any appropriate Board Committee designated

by the President, directs the Chancellor to withhold action within a 10 day period from the date the summary is provided.

(d) All grants awarded by the Board of Governors or the Chancellor on or after January 1, 1996, shall be awarded through competitive processes or through allocation formulas reviewed and approved by the Board of Governors, except that:

(1) Grants may be awarded competitively within regions.

(2) Grants for regional or statewide coordination activities for the Extended Opportunity Programs and Services (EOPS), Disabled Students Programs and Services (DSPS), Matriculation, and Economic Development programs need not be competitively bid.

(3) Where there are conditions beyond the control of the Chancellor which limit competition, such as matching fund requirements or other agencies being required to select grantees, the Chancellor, in consultation with the President of the Board and the Chairperson of the appropriate committee, shall have authority to award grants without competition.

(e) Panels evaluating or scoring grant proposals will include or be comprised of outside readers as appropriate and will be comprised so as to assure objectivity and prevent conflicts of interest. In the event that outside readers are not used, the evaluation panel shall be comprised of staff from more than one division in the Chancellor's Office. The Chancellor shall ensure that readers are appropriately trained with respect to the process for review of grant applications.

(f) Grants for the performance of functions which are ongoing in nature will be awarded in cycles of between one and five years in length. In advertising a grant for an ongoing function, district personnel will be apprised of the length of the cycle and the funding anticipated to be available for the duration of the project; provided however, that nothing in this section shall be construed to preclude subsequent adjustment of actual funding levels to reflect unforeseen circumstances. Districts shall be further informed that continuance of the grant will depend on year-to-year funding, and continued satisfactory performance. The Chancellor shall have the authority to exempt grants described in subsection (d)(2) or those awarded under the Mathematics, Engineering, and Science Achievement (MESA) program, the Middle College High School program, or the Puente project from the duration limitations imposed by this paragraph.

(g) As a condition of receiving funding from the California Community College Chancellor's Office, educational materials created using those funds should be made available by the grantee under the Creative Commons Attribution License (CC BY) with the following symbol included:



~~(g)~~ (h) A district which, prior to January 1, 1996, has been awarded a grant on a non-competitive basis for the performance of an ongoing function may continue to be awarded that grant, at the discretion of the Chancellor, for a period of up to three additional fiscal years. Retention of the grant shall depend on continued availability of funds and satisfactory performance. At the conclusion of the term, the grant for the ongoing function shall be awarded on a competitive basis.

~~(h)~~ (i) To the extent that a grantee contracts with a private or public entity to perform certain parts of the grant, the grantee shall be required to disclose the intended purpose and amount of such subcontracting, shall agree to follow locally applicable competitive bidding processes in doing such subcontracting, and shall agree to name the subcontractors chosen.

~~(i)~~ (j) The procedures specified above shall not apply to grants which are distributed on an allocation formula basis which has been reviewed and approved by the Board of Governors.

ATTACHMENT 2

ARTICLE II, Standard Legal Terms and Conditions (Revision 04/04/2008), #18

18. Intellectual Property

a. Grantee agrees that any and all services rendered and documents or other materials, inventions, processes, machines, manufactures, or compositions of matter, and/or trademarks or servicemarks first created, developed or produced pursuant to the Grant Agreement, whether by Grantee or its subcontractors or subgrantees, shall be and are Work for Hire. All subcontracts or subgrants shall include a Work for Hire provision by which all materials, procedures, processes, machines, and trademarks or servicemarks produced as a result of the Grant Agreement shall be Work for Hire. All rights, title, and interest in and to the Work first developed under the Grant Agreement or under any subcontract or subgrant shall be assigned and transferred to the Chancellor's Office. This Work for Hire agreement shall survive the expiration or early termination of this Grant Agreement.

b. The copyright for all materials first produced as a result of this Work for Hire agreement shall belong to the Chancellor's Office. Grantee, and all subcontractors, subgrantees, and others that produce copyright materials pursuant to the Grant Agreement, assigns all rights, title and interest, including the copyright to any and all works created pursuant to this Work for Hire agreement, to the Chancellor's Office. The Chancellor's Office shall acknowledge Grantee or its subcontractors and subgrantees, if any, as the author of works produced pursuant to this Work for Hire agreement on all publications of such work. The Chancellor's Office will license such copyrighted work with a Creative Commons CC BY license. This license will allow Grantee or its subcontractors and subgrantees, if any, to reproduce and disseminate copies of such work, provided the licensee agrees not to permit infringement of the copyright by any person, to compensate Chancellor's Office for any infringement which may occur, and to indemnify and hold harmless the Chancellor's Office for any and all claims arising out of or in connection with the licensing agreement. Said license shall include the right to create and use works derived from those created under this Grant Agreement, even if such derivative works compete with those created under this Grant Agreement.

All materials first developed in draft and in final form pursuant to this Grant Agreement shall, in a prominent place, bear the © (the letter "c" in a circle) or the word "Copyright," or the abbreviation "Copr.," followed by the year created; and the words "California Community Colleges, Chancellor's Office." In addition, all such materials shall bear the Creative Commons CC BY symbol below. Acknowledgment may be given to Grantee or the actual author(s) of the work in an appropriate manner elsewhere in the copyright material. If it is deemed necessary by either the Chancellor's Office or the Grantee that the copyright be registered with the U.S. Copyright Office, Grantee will be responsible for applying for, paying the filing fees for, and securing said copyright.



c. All technical communications and records originated or first prepared by the Grantee or its subcontractors and subgrantees, if any, pursuant to this Work for Hire agreement, including papers, reports, charts, computer programs, and technical schematics and diagrams, and other documentation, but not including Grantee's administrative communications and records relating to this Grant Agreement, shall be delivered to and shall become the exclusive property of the Chancellor's Office and may be copyrighted by the Chancellor's Office.

d. If it is deemed necessary by either the Chancellor's Office or the Grantee that a patent be obtained from the U.S. Patent and Trademark Office for any invention, process, machine, manufacture, or composition of matter, Grantee will be responsible for applying for, paying the filing fees for, and securing said patent. All patents for inventions, processes, machines, manufactures, or compositions of matter developed pursuant to this Grant Agreement shall be issued to the "California Community Colleges, Chancellor's Office." All products and references to patents shall be marked and designated as such as required by law. Acknowledgment may be given to Grantee or the actual inventor(s) in an appropriate manner. The Chancellor's Office agrees to grant a nonexclusive license for such intellectual property to the Grantee. Said license shall include the right to use the patent for inventions, processes, machines, manufactures, or compositions of matter derived from those created under this Grant Agreement.

e. All trademarks and servicemarks first created, developed or acquired pursuant to this Grant Agreement shall be the property of the Chancellor's Office. If it is deemed necessary by either the Chancellor's Office or the Grantee that a trademark or servicemark be registered with state or federal agencies, Grantee will be responsible for applying for, paying the filing fees for, and securing said protection. All trademarks and servicemarks obtained pursuant to this Grant Agreement shall be issued to the "Chancellor's Office California Community Colleges" and carry the designations permitted or required by law. The Chancellor's Office agrees to grant a nonexclusive license for the use of trademarks or servicemarks created, developed or obtained under this Grant Agreement to the Grantee.

f. In connection with any license granted pursuant to the preceding paragraphs, Grantee agrees not to permit infringement by any person, to compensate Chancellor's Office for any infringement which may occur, and to indemnify and hold harmless the Chancellor's Office for any and all claims arising out of or in connection with such license. Grantee may, with the permission of the Chancellor's Office, enter into a written sublicensing agreement subject to these same conditions.

g. Any and all services rendered, materials, inventions, processes, machines, manufactures, or compositions of matter, and trademarks or servicemarks created, developed or produced pursuant to this Grant Agreement by subcontractors or subgrantees that create works for this Grant for Grantee are for and are the property of the Chancellor's Office. Grantee shall obtain an acknowledgement of the work for hire performed by these subcontractors or subgrantees that produce intellectual property pursuant to this Grant Agreement, and all rights, title, and interests in such property shall be assigned to the Chancellor's Office from all subcontractors or subgrantees. Grantee shall incorporate the above applicable paragraphs, modified appropriately, into its agreements with subcontractors or subgrantees that create works for this Grant. No unpaid volunteer or other person shall produce copyright materials under this Grant Agreement without entering into a subcontract or subgrant between such person(s) and Grantee giving the Chancellor's Office the foregoing rights in exchange for the payment of the sum of at least one dollar (\$1).