

THE 50% LAW AND THE FACULTY OBLIGATION NUMBER: A PROPOSAL

For many years, the 50% Law (Education Code Section 84362) and the Faculty Obligation Number (FON, Title 5 Sections 51025 and 53311) have been both guiding principles and sources of controversy in the California Community College System. Attempts have been initiated on numerous occasions and from various parties to reform or even abolish these statutory and regulatory requirements. However, as much as some groups have called for change, others have just as vigorously defended these requirements as necessary and beneficial to the system. As a result, both the 50% Law and the FON have remained essentially unchanged.

In the fall of 2014, a small contingent of faculty and administrators, motivated by their shared interest in exploration of ways to improve the 50% Law and the FON, embarked on an effort to set in motion a serious discussion of these requirements. Presentations at conferences and meetings of the Community College League of California, the Academic Senate for California Community Colleges, the Association of California Community College Administrators, and other groups revealed significant interest and willingness from many different parties to engage in this discussion. In response to this interest, Chancellor Brice Harris commissioned a small workgroup of faculty and administrators to explore the issues and, if possible, to develop a proposal for reform.

The workgroup considered a number of issues relevant to the 50% Law and the Faculty Obligation Number. Among these issues were the changing needs of students and the changing instructional environment since the 50% Law was enacted in 1961 and the FON was instituted in conjunction with AB 1725 (Vasconcellos) in 1988. The discussion included the ways in which instructional practice has changed, especially with regard to how learning has become a shared activity with a greater appreciation for instructional support services inside and outside the classroom. While the community college system has always been dedicated to student success, the more recent focus on services that support student success through initiatives such as the Student Success and Support Program, along with an increased emphasis on accountability and a greater dependence on instructional technology, call for a redefinition of the expenses considered to be instructional in nature. The workgroup also considered the ways in which the various requirements of the 50% Law and the FON might be aligned into a more compatible and cohesive form. With regard to the FON, the group explored ways in which the system might make steady progress toward the goal stated in Education Code Section 87482.6 of 75% of instructional hours being provided by full-time faculty, something the present FON requirement was never designed to accomplish.

As it deliberated on possibilities for revising the 50% Law and the FON, the workgroup agreed on the following overall guiding principles and conclusions:

- A. The focus of the 50% Law should continue to be on instructional costs
- B. Any new definition of instructional costs would necessitate a re-determination of the percentage of general fund dollars appropriate to those costs
- C. General fund match requirements should be eliminated for all restricted funds
- D. The FON should be modified to reflect an ongoing focus on making progress toward the 75% goal in a systematic way

Within this context, the workgroup developed the following proposals for revising the 50% Law and the FON. The workgroup members unanimously agreed upon and support these proposals and believe them to be realistic changes that can address the various interests of the system's constituent groups. However, these discussions constitute only the first step in a process. A further set of meetings to review statistical data and establish the recommended changes in the percentage is required in order for these proposals to move forward. The proposals are intended to provide the framework for a system wide discussion and the core components for a serious consideration of possible revisions. Any actual recommended change to either statute or regulation will require agreement through the system's established consultation process.

The 50% Law

In no case did the workgroup entertain the idea of abolishing the 50% Law. The workgroup members recognized that the law serves specific purposes for which it should be preserved. Rather, the focus of the workgroup was to consider ways to revise the law in a manner that retains its focus on learning and instruction while allowing more budgetary flexibility and making it more compatible with the FON and the 75% goal.

After entertaining a variety of approaches to this issue, the workgroup agreed that the essential structure of the 50% Law should remain unchanged but that the definition of instructional expenses should be reconsidered. With the expenses that should be included on the instructional side of the law's equation having been identified, the workgroup also agreed that an appropriate percentage of instructional costs as a proportion of the general fund total costs will need to be determined and that ultimate consensus by the workgroup is dependent upon agreement regarding this percentage

In determining which expenses to include as aspects of instruction, the workgroup agreed in principle that only costs that directly impact instruction and learning should be included. The direct instructional costs that are outlined in the current 50% Law were retained as essential in the calculation of instructional expenses. The following criteria were used in determining additional costs that could be included as instructional:

- A. All faculty work outside the classroom that plays a direct role in the education of students.
- B. Individuals who provide educational services directly to students
- C. Services that assist in the direct education of students.
- D. Governance activities that pertain directly to the education of students.
- E. Professional activities that pertain to the curriculum.

Using these criteria, the workgroup considered a wide array of possibilities. Some proposed expenses were rejected on the basis that they were primarily administrative functions, were too distant from the classroom, or for other reasons that prevented them from meeting the criteria. The final determination of the workgroup was that the following expenses should be included as instructional in the new calculation:

- All expenses considered to be instructional in the current calculation
- Salaries and benefits of counselors and librarians
Counselors and librarians are faculty members who serve necessary functions for the instruction of students, whether inside or outside the classroom.
- All tutors performing in an instructional capacity in a supervised setting
Tutoring and support services, including supplemental instruction programs, are an essential aspect of promoting student success. These expenses should be limited to college-developed programs that involve tutoring services monitored by and performed under faculty supervision. Tutoring services should be seen as a supplement to faculty and should not be used to replace direct faculty instruction.
- Faculty reassigned time for instructional program and curriculum development and modification
Faculty participation in curriculum development, design, and modification is necessary for the creation and maintenance of effective instructional programs.
- Reassigned time for college and district academic senate governance activities
Academic senate participation and representation in governance activities is essential for effective collegial decision-making that has a direct impact on the instructional program.

If all of these expenses were included as instructional, a new percentage amount of the general fund budget appropriate to these expenses would need to be determined.

In addition, the workgroup agreed that new purchases for instructional software and technology should be excluded from the 50% Law calculation and should not be counted on either side of the equation.

The Faculty Obligation Number

The FON was established in 1989 as a means of ensuring that colleges at a minimum increased their number of full-time faculty workforce in proportion to their growth in credit FTES. Annually, the Board of Governors determines whether or not the state budget has provided colleges with resources adequate to implement the regulation. However, increases in the FON in times of growth are reversed in times of revenue decline. Consequently, since the creation of the FON, the percentage of instruction provided by full-time faculty in the system has decreased rather than increased and progress has not been achieved toward the system's 75% goal.

Having 75% of instructional hours provided by full-time faculty was one of the most important goals under AB 1725. The legislation explained the importance of this goal as follows:

If the community colleges are to respond creatively to the challenges of the coming decades, they must have a strong and stable core of full-time faculty with long-term commitments to their colleges. There is proper concern about the effect of an over-reliance upon part-time faculty, particularly in the core transfer curricula. Under current conditions, part-time faculty, no matter how talented as teachers, rarely participate in college programs, design departmental curricula, or advise and counsel students. Even if they were invited to do so by their colleagues, it may be impossible if they are simultaneously teaching at other colleges in order to make a decent living. (AB1725 Vasconcellos 1988 Section 4 .b.)

The California community college system has failed to attain this goal for a number of reasons, including but not limited to a lack of funding for increased full-time faculty hiring, fluctuations in the economy, rapid enrollment growth, faculty retirement incentives, and competing demands for system resources. Rather than encouraging the system to make progress toward the 75% goal, the FON has itself become the goal for most colleges.

In order to refocus the system's attention on the 75% goal and to ensure that the FON is used to make progress toward this goal, the workgroup recommends implementation of the following procedures and requirements regarding full-time faculty hiring:

- The FON should continue to be employed based on FTES changes and state-allocated funding for enrollment growth and current FON requirements should be re-benchmarked based on districts' full-time faculty workforce in the fall of 2015. This re-benchmarking should include noncredit faculty, who are currently excluded from the FON equation.
- A sliding scale should be established for future adjustment of the FON, with those institutions with the lowest percentage of full-time faculty expected to

show greater progress. Such a sliding scale would help to make progress at institutions that have performed less successfully in full-time faculty hiring without placing undue requirements on higher-performing institutions.

- The system should continue to advocate for a standing line-item allocation in the state budget for full-time faculty hiring.
- All community college districts should be required to submit to the Chancellor's Office a five-year plan for full-time faculty hiring designed to make local progress toward the 75% goal. Districts should review and update these plans on an annual basis. Completion and submission of this plan should require signatures from the local academic senate, the faculty bargaining agent, and the district CEO. Elements of the plan should include the following:
 - The district's historical performance in terms of full-time hiring and progress toward the 75% goal;
 - Demonstration of ways in which the district has integrated full-time faculty hiring goals into its overall college planning process;
 - The district's projected five-year goal for full-time faculty hiring and progress toward the 75% goal, coordinated at minimum with the sliding scale developed for adjustment of the FON; and
 - The district's anticipated strategies for achieving its five year goal, including maintenance of its full-time faculty numbers in the event of an economic downturn and progress toward the 75% goal both in years in which the system receives growth funding or other additions to base funding and in years in which designated state-level funding for such hiring is not provided.

To assure an ongoing local commitment to academic quality, penalties for failure to achieve the redesigned FON, which will be structured with the intent of helping districts make progress toward the 75% goal, will be connected to progress toward the goals in the district's plan. Hardship exemptions may be allowed for districts under specified fiscal conditions.

- Data regarding the district's performance and progress toward achieving the 75% goal should be included in both the CCC Scorecard and the CCCCC Institutional Effectiveness Partnership Indicators.

Workgroup Recommendations for Further Steps

1. Definition of instructional expenses and a process for promoting full-time faculty hiring were the focus of the initial discussions of the workgroup and are outlined in this report. While the workgroup reached consensus on these matters, all members recognize that the consensus will not be complete until further details are defined. The workgroup therefore intends to continue meeting in order to review data and develop the following necessary aspects of the proposal:
 - a. The specific percentage of the general fund budget that will constitute the minimum for instructional expenses under the revised formula for

Education Code Section 84362, previously referred to as the 50% Law.

- b. The specifics of the sliding scale formula for the future adjustment of the re-benchmarked Faculty Obligation Number and its application to district plans for making progress toward the 75% goal.
 - c. The specific hardship circumstances under which districts could be exempted from demonstrating progress toward the 75% goal in their full-time faculty hiring plans.
2. The workgroup also recognizes that revision of the 50% Law and establishment of a process that demonstrates commitment to progress toward the 75% full-time faculty goal are dependent on one another. Both revisions must be pursued in conjunction with one another, with the requirement of a full commitment of system partners to both revisions before either takes place.

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