

Regulations – The ABC's of Rulemaking



Presented by: The Office of the General Counsel



CALIFORNIA COMMUNITY COLLEGES

agenda

Overview

- ✓ 6 Required standards of Regulations
- ✓ Initiation through Consultation
- ✓ Board of Governors – 1st & 2nd Readings
- ✓ The Notice of Rulemaking/Public Hearing
- ✓ 15-Day Re-notice/”Sufficiently Related”
- ✓ Fiscal Impact Statement
- ✓ Filing with the Secretary of State and OAL



BOG Exemption

Welcome Lindsey McNeill!

Attorney with the Office of Administrative Law

BOG exemption and what it means with respect to OAL review



PHASE ONE

Getting Started



Procedures and Standing Orders

- Procedures and Standing Orders: 200-212
- Available at BOG link on our web page
- Neither the BOG nor the Chancellor has authority to enforce or administer any regulation unless adopted in accordance with the Standing Orders.





Regulatory Actions

“A Regulatory Action” includes the adoption, amendment, or repeal of a regulation.

- Changes include renumbering, reordering, or relocating an existing regulation;
- Removal of any sections for which the statutory authority has been repealed; and
- Addition of new sections based on new statutory authority.



Standards of Regulations

All regulations must adhere to 6 standards:

1. Necessity

- ➔ Mandated by a California statute or other applicable law, or
- ➔ Clarifies a system issue or administrative requirement

2. Authority - The provision of law which permits or obligates the BOG to adopt, amend or repeal a regulation

3. Clarity - written so that the meaning will be easily understood



Standards of Regs (cont'd)

4. Consistency - not in conflict or contradictory to existing statutes, court decisions, or other laws
5. Reference - the statute, court decision, or provision of law which the BOG implements, interprets, or makes specific by adopting, amending, or repealing a regulation
6. Nonduplication - Does not serve the same purpose as a state or federal statute or another regulation



Authority and Reference

- Authority is presumed to exist only if an agency cites it in the Authority “Note”
- Usually Ed. Code §§ 70901 and 70902
- Authority is the statutes that permit us to act
- Reference is what we are interpreting or changing.



Education Code 70901(c)

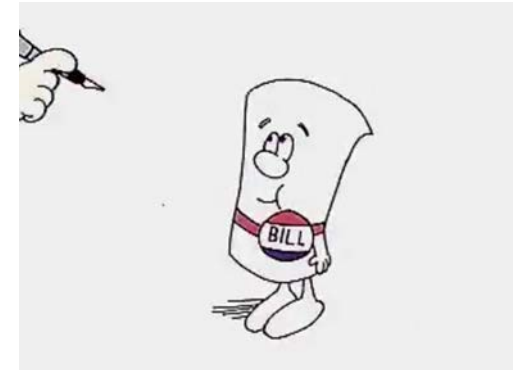
Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.



Initiation

Request for change to regulations comes from:

- Legislature
- Constituent Group (i.e., Academic Senate)
- A district
- A program area
- Office of the General Counsel



Coordination

- Ideally should be brought to Executive Staff for discussion of the need and potential political ramifications
- May impact other divisions who should be apprised of all proposed changes



Development

- Development of actual language is usually done by program staff
- **Always copy the regulation to be worked on in its entirety from the official website at <https://govt.westlaw.com/calregs>**
- All changes must be done in hard underline and strikeout – **DO NOT USE TRACK CHANGES!**
- The title of your package should be the **same as the regulation**



Final Text

Title 1, section 8, reads:

- “The final text of the regulation shall use underline or italic to accurately indicate additions to, and strikeout to accurately indicate deletions from, the California Code of Regulations.”
- “Regulation” also includes authority and reference



Consultation

- When preparing Consultation Digest, it is important that proper format be utilized
- Submitted to Consultation for discussion and refinement
- Package should be submitted to Consultation at least two months before 1st BOG meeting



Legal Holds Master

Once you have submitted the regulations to the Legal Office for review, we now hold the Master Copy. Any changes, additions, deletions made after the initial submission should be submitted **with highlights** and sent to Legal so that we can make the changes to the Master Copy.



PHASE TWO

Requirements



Notice of Rulemaking/Public Hearing

- Legal will prepare the Notice form and provide to program staff to complete some sections.
- This is a 45-day notice to the public that regulations are being changed, a hearing will be held, and inviting public comment
- Must be mailed and posted to website at least ten days prior to the BOG meeting



Notice Items Completed by You

- The Informative Digest function is to provide the general public with sufficient information about the proposed changes
- Also need contact information for Dean or program staff that will accept public comments and answer questions
- Estimate of costs or savings



Standard ListSrvs

- All Interested Parties, plus:
- Boards of Trustees (**bot-all**)
- Presidents and Superintendents/CEOs (**ceo-all**)
- Chief Business Officers (**cbo-all**)
- Chief Instructional Officers (**cio-all**)
- Admissions Officers and Registrars (**adreg-all**)
- Financial Aid Officers (**cfao-all**)
- Matriculation Officers (**mat-all**)
- Chief Student Services Officers (**csso-all**)
-
- **Others to consider:**
- Counselors, Deans of Student Services, EOPS, DSPS, Others?



BOG Agendas

- Contact Karen for an agenda item number
- Prepare agenda item and submit to Legal with attachments (next slide) for review
- You complete the Issue, Background, and Analysis
- There is specific language in the agenda item that must be included (Recommended Action)
- The agenda item deadline is typically one month before the meeting date – give Legal time to review
- We will then return an approved package for submittal to Karen.



BOG Agenda Attachments

- Attachment 1 – Regulations
- Attachment 2 – Summary and Analysis (next slide)
- Attachment 3 – Summary of Public Comments, if any (2nd Reading)



Sample Summary and Analysis

SUMMARY AND ANALYSIS OF PROPOSED CHANGES TO CREDIT COURSE REPETITION §§ 55000, 55023, 55030, 55040, 55041, 55043, 58161, 58162, 58166

General

Non-substantive, technical changes are proposed throughout for clarity and consistency. Where appropriate, subdivisions have been relettered or renumbered to accommodate proposed additions or deletions.

§ 55000

Generally, definition sections found throughout Chapter 6 are proposed to be consolidated into section 55000, Definitions. Subdivisions are proposed to be relettered as appropriate to maintain alphabetical order of the terms defined.

§ 55000(a)

The definition of “active participatory courses” is proposed to clarify the general type of class that may be repeatable. Of most concern to the Academic Senate was the prior use of “activity” as a general term, which was deemed too general and not appropriate.



Fiscal Impact Statement

- Legal will provide you with Form 399 to complete
- Needs to be signed off by Mario and Erik
- Provided to DOF at the same time Notice and Agenda are mailed out



BOG – 1st Reading/Public Hearing



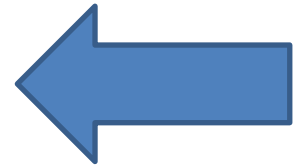
Public Comments

- May be received at the public hearing, or
- Written comments within the 45 day period
- Must be responded to and response included at the second BOG meeting
- All comments should remain with Legal's official rulemaking file



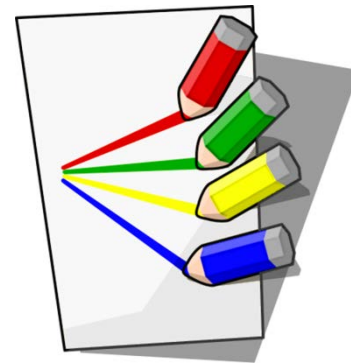
15-Day Renotice

- To be used after the 45 day notice has gone out and additional changes or corrections are needed
- Changes must be “sufficiently related”
- Comments will only be allowed on the new changes
- PROVIDE THE CHANGES IN **HIGHLIGHT**
- New changes must be shown in **double underline** or double strikeout. (~~XXX~~)



“Sufficiently Related”

- Changes to the text of a regulation shall be deemed to be “sufficiently related” if a college official or member of the public familiar with the community college system could reasonably anticipate that the proposed change might be considered.



“Nonsubstantial Changes”

Changes to the original text of a regulation shall be deemed to be “nonsubstantial” if they clarify without materially altering the requirements, rights, responsibilities, or conditions contained in the original text



BOG 2nd Reading/Adoption Item

- The final version of the proposed regulations is submitted as an action item with a request for Board adoption
- The Board agenda item should be prepared by staff and submitted to Legal for review as there is specific language that is required



Summary of Comments

- This is attachment #3 to your Board item
- See Handout for this Example
- Summarize the comment
- Provide proposed Response



PHASE THREE

Closeout



Board of Governors Meeting Agenda for September 2016

Quick Glance Agenda ([click here](#))

Full Order of Agenda ([click here](#))

Meeting Location

Woodland Community College
Community Room
2300 E. Gibson Road
Woodland, CA 95776
(530) 661-5700

September 19-20, 2016

Monday, 9/19/2016 (12PM-5PM*)

Tuesday, 9/20/2016 (9AM-11AM*)

*all times are approximate and subject to change

Consent Calendar

Item 1.1 Approval of the Board Meeting Minutes

Action Calendar

Item 2.1 Approval of Contracts and Grants

Item 2.2 Articulation of High School Courses (Attachment)

Item 2.3 Academic Record Symbols & Grade Point Average - Satisfactory Progress Grade (Attachment 1) (Attachment 2)

Item 2.4 Voter Registration and Civic Engagement (Attachment)

Item 2.5 2017-18 System Budget Request (Attachment 1) (Attachment 2)

Item 2.6 Regulations Governing the New Cooperating Agencies Foster Youth Educational Support Categorical Program - CAFYES (Attachment 1) (Attachment 2)



Handouts, Reports, Attachments

- Provide to Legal:
 - Reports relied on by the agency in the development of the regulations
 - Agenda item attachments
 - Handouts provided at BOG meetings
- These need to be kept in the official Rulemaking file



Rulemaking File

- We are required to maintain an official regulatory file that serves as a record of the process
- The file is kept indefinitely and is subject to the Public Records Act
- Ensure that Legal has copies of all handouts, written comments, or other relevant information
- We also keep an index of all sections of title 5 that have ever been modified so you can find the history



Receipt of Form 399

- If Finance approves the regulations, the process continues. If they do not, the process halts. It can take anywhere from a couple weeks to a couple of years to receive the signed Fiscal Impact Statement (Form 399)
- Please ensure Legal receives the original!



Effective Date



- Once we have received:
 - ➔ BOG approval
 - ➔ Signed Fiscal Impact Statement from Finance
- The regulations are filed with the Secretary of State and become effective 30 days after filing



OAL – PRINT ONLY

- After filing, regulations are typically sent to the Office of Administrative Law (OAL) the same day
- OAL will do a final review and then send the regulations to the publisher
- NOTE: Although frequently asked, we cannot provide a “CLEAN” copy of the regulations. Once they have become approved by OAL, they can be obtained from the official site at <https://govt.westlaw.com/calregs>



Final Statement of Reasons

- Brief statement of the background and “necessity” or purpose of each adoption, amendment, or repeal
- Sets forth the reasons for each regulation change
- Summarizes comments and provides information as to whether and how the regulation was amended after considering comments



Review of the Requirements

Requirements



Review

1. Draft Consultation Digest and proposed regulatory changes. Send regs to Legal to hold as “Master” copy

2. Get Agenda item number from Karen and draft Agenda item

3. Prepare Attachment 2 (Summary and Analysis)

4. Prepare Informative Digest for Notice of Proposed Rulemaking

5. Prepare the Fiscal Impact Statement and get signed by Mario and Erik; Legal files with Department of Finance

6. Legal ensures the Notice goes out at least 10 days before the public/BOG meeting. Provide other listservs if required

7. Prepare BOG Agenda item for Second Reading/Adoption and Attachment 3 (Summary of Comments) (if applicable)

8. Legal files approved regulations with Secretary of State

9. Legal sends filed regulations to OAL for final review and printing.

10. Prepare Final Statement of Reasons



Important Reminders

- Always copy the regulation to be worked on in its entirety from the official website at <https://govt.westlaw.com/calregs>
- All changes must be done in hard underline and strikeout – **DO NOT USE TRACK CHANGES!**
- The title of your package should be the **same as the regulation**



Notes

- Every single character of the regulations must be painstakingly accounted for
- We cannot properly review agenda items, regulations, the Notice, Fiscal Impact Statement, and supporting documentation without adequate time
- This is a frequent cause for 15-day Renotices



Questions?





THANK YOU!

