

STATE OF CALIFORNIA

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April 18, 2006

Dr. Philip R. Day, Jr., Chancellor
City College of San Francisco
31 Gough St. Room 16
San Francisco, CA 94103-1214

Re: Reduced Workloads for Administrator
Legal Opinion 06-04

Dear Dr. Day:

Your District has asked us to respond to the following questions regarding the application of Education Code section 87483 to college administrators:

1. Are academic administrators eligible for the workload reduction described in Education Code section 87483?
2. Assuming academic administrators are eligible, can a district decline to allow specific administrators reduced workloads while allowing other administrators to have reduced workloads?
3. Must all of the qualifying service for a reduction be performed while employed by the district that provides the workload reduction?

Conclusions:

1. Academic administrators are eligible for the reductions under section 87483.
2. Once a district implements a system for reducing administrative workloads under section 87483, the reduction must be available to all eligible administrators who request it.
3. It is likely that all qualifying service must be performed while employed by the district that is providing the workload reduction.

These conclusions are based on the analysis set forth below of how Education Code section 87483 applies to administrative personnel. Section 87483¹ authorizes community college district boards to establish regulations to allow "academic" employees to reduce their workloads from

¹ A copy of the text of section 87483 is attached for your convenience.

full-time to part-time while still securing full-time retirement credits under Education Code section 22713 or Government Code section 20815².

Education Code section 22713 falls within the State Teachers' Retirement System (STRS) portion of the code, and it essentially mirrors section 87483, except that participant eligibility extends to persons who are members of the Defined Benefit Program under STRS. It is not surprising that the term "academic employees" is not used in section 22713 because "academic employees" is a community college system term, while the STRS statutes apply to K-12 districts and to county superintendents of schools in addition to community college districts.

1. Are academic administrators eligible for the reduction? The predecessor to section 87483 was added to the Education Code in 1974. It included the following statement: "This section shall not be applicable to persons who are administrators in community colleges." However, in 1978, after the section had been renumbered to its current section number, the provision that restricted application of the section to community college administrators was eliminated. Obviously, the elimination of the provision is a clear indication that community college administrators are eligible for the workload reduction.

There is also a reported case that specifically applies the K-12 version of the section to an administrator. (Section 87483 is essentially the same provision as section 44922 that applies to K-12 districts.) To the extent the provisions are similar, judicial interpretations of section 44922 can be fairly considered in interpreting section 87483.

In *Sinatra v. Chico Unified School District* (2004) 119 Cal.App.4th 701, an assistant principal (a certificated administrator in the K-12 structure) requested a workload reduction from full-time to part-time under section 44922. We believe that a certificated administrator in K-12 is a fair corollary to an academic administrator in the community college system.

After Mr. Sinatra requested a reduced administrative assignment, the school offered him a 40% administrative assignment and a 20% teaching assignment. He rejected the offer. Thereafter, the school assigned him to full-time teaching with no administrative assignment, and he took a medical leave of absence. Mr. Sinatra then filed a complaint alleging that he was constructively discharged in violation of public policy. Constructive discharge essentially means that a person is forced to resign in response to intolerable employer actions.

Mr. Sinatra asserted that section 44922 embraced a fundamental public policy - i.e., a right that is "fundamental and substantial and must inure to the benefit of the public at large." (*Id.*, at p. 707.) The court held that:

"Section 44922 grants the District the discretion to implement a part-time program for senior employees. While it enables school districts, therefore, to bestow a valuable right on a select segment of their employees, section 44922 does not embody the kind of universal and important right recognized as fundamental to the public good. As the District points out, school districts

² Government Code section 20815 appears to be an outdated section; the reference should be to section 20900 which describes a load reduction program for California State University academic employees. It is not clear why such employees are even referenced in section 87483.

are not obligated to provide the part-time program. Nor is there a direct benefit to the public at large. While individual teachers and administrators are able to reap the benefits of the part-time option, the benefit to the public is indirect and tangential." (Id., at p. 708, emphasis added.)

The foregoing passage confirms that districts are not required to offer the option of a reduced workload, and it also verifies that certificated administrators as well as faculty are eligible for such reduced assignments. Due to the similarities between the K-12 provision and section 87483, as well as the removal of the statutory prohibition to allowing the reduced workload option for community college administrators, we conclude that section 87483 also applies to academic administrators.

2. Assuming academic administrators are eligible, can a district allow some administrators to take reduced workloads while rejecting reduced workloads requested by other administrators? Although academic administrators may be eligible for reduced loads under the statute, actual availability of the reduction will depend on the regulations adopted by the local board. The scope of allowable regulations under section 44922 was addressed in *United Teachers-L.A. v. Los Angeles Unified School District* (1994) 24 Cal.App.4th 1510. Once again, because of the similarities in the statutes, we believe that the analysis informs the interpretation of section 87483.

In *United Teachers*, the district's regulations were adopted in the form of a faculty collective bargaining provision. The collective bargaining agreement provided that five years was the maximum allowable period for reduced service; it also provided that the district had discretion to grant part-time workload status. Sections 44922 and 87483 both require employees who receive the reduction to be at least 55 years old. Both sections allow a 10-year maximum period of part-time employment. Both sections also provide that "the option of part-time employment shall be exercised at the request of the employee. . . ."

The court noted that districts were not required to adopt workload reduction programs, but that if they did, the programs had to include elements that were mandatory under the Education Code. The court found that both the period of the reduction (up to 10 years), and the option of part-time employment resting with the employee were mandatory parts of the law. That is, the district could not limit the load reduction to 5 years, nor could it deny the reduction to faculty who requested it. Thus, if the District adopts regulations to provide a reduced workload program to administrators, it would appear that reduced services can be compelled for up to 10 years and that the District must grant the reduced service option to any eligible academic administrator who is at least 55 years old and who requests a reduction.

It could be argued that there are substantial differences between administrative employees and faculty, such that greater latitude should be permitted in the granting of administrative workload reductions. Most notably, districts have much more discretion in the employment of administrative personnel, who generally serve at the pleasure of the governing board. Moreover, in practice, it may be that if a faculty member reduces his or her workload by one class assignment, it would be possible to cover that workload with a part-time faculty assignment or an overload assignment for a full-time faculty member. On the other hand, it may not be possible to

replace up to 50% of an administrator's load with a part-time administrator or by assigning administrative overloads to other, full-time administrators.

Nevertheless, since the courts have interpreted the analogous K-12 statute so as to require uniform application of the law, it is likely that a district policy which does not allow all eligible administrators to take advantage of this option would be challenged. Thus, we believe districts should be prepared to accept reduced discretion concerning their administrative employees if they adopt reduced workload regulations for administrators.

The statute permits a district to establish by regulation what level of part-time service is allowable. Districts cannot allow part-time service that is less than one-half the number of days of service required of the employee in the final year of full-time service. Accordingly, a district could establish regulations that allow anywhere from a 1 percent reduction up to a 50 percent reduction. However, once the regulations are adopted, an eligible employee could secure a part-time assignment for 10 years.

If a district is not prepared to allow all eligible administrators to reduce their workloads under section 87483, it may be able to implement other options that provide for flexibility among administrators. For example, districts could potentially accommodate employee and district needs by tailoring individual administrative contracts.

3. Must all of the qualifying service for a reduction be performed while employed by the district that grants the reduced workload?

Section 87483 allows districts to consider reduced workloads only for employees who have been employed full-time in an academic position for at least 10 years of which the immediately preceding 5 years were full-time. The question is whether some of the qualifying service can be provided with a different employer.

Section 87483 does not address this point. However, we believe that the qualifying service must be with the district that grants the reduction. Each community college district is a separate entity and a separate employer. The section authorizes districts to reduce the workloads of their own employees, based on qualifying years of service. Allowing that qualifying time to accrue under other employers is not consistent with general employment principles in the system where there is no general carry-over of employment rights between community college districts. For example, if a faculty member is tenured in one district, that person does not carry his or her tenure over to a subsequent community college employer. In fact, we are aware of only one instance where there is a carry-over, and that carry-over is expressly stated: Education Code section 87782 permits an academic employee to take his or her accumulated sick leave to a subsequent employing district.

We believe that the Legislature would have expressly stated that qualifying time under section 87483 was portable from district to district had that been its intent.

We hope the foregoing is useful to you.

Sincerely,

Steven Bruckman

Executive Vice Chancellor and General Counsel

SB:RB:sj

Attachment

cc: Ronald Lee, Esq., General Counsel w/attachment
Steven Herman, Dean of Administrative Services w/attachment