

NOTICE PUBLICATION/REGULATIONS SUBMISSION

PRINT

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER <b>2023-0317-02P</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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In the office of the Secretary of State  
of the State of California

MAR 17 2023

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OFFICE OF ADMIN. LAW  
2023 MAR 17 PM 2:59

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Board of Governors of the California Community Colleges	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE N/A	TITLE(S) N/A	FIRST SECTION AFFECTED N/A	2. REQUESTED PUBLICATION DATE N/A
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON N/A	TELEPHONE NUMBER N/A	FAX NUMBER (Optional) N/A
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) DEIA Evaluation and Tenure Review of District Employees	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 52510, 53425, 53601, 53602, 53605
AMEND 53400, 53401, 53403
TITLE(S) 5
REPEAL 53402

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) Authority-Ed Code Section 70901.5	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input checked="" type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d), Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) 30 days after filed w/Secretary of State

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)

7. CONTACT PERSON Tanya Bosch - Regulation Coordinator	TELEPHONE NUMBER (916) 445-4826	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 3-16-2023
TYPED NAME AND TITLE OF SIGNATORY Fermin Villegas, Deputy Counsel	

# Final Regulatory Text: Amending Title 5 of the California Code of Regulations, to Include Diversity, Equity, Inclusion, and Accessibility Standards in the Evaluation and Tenure Review of District Employees

## A NEW SUBCHAPTER 1, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS ADDED TO READ:

### Subchapter 1. Definitions

#### § 52510. Definitions.

The following definitions shall apply to this chapter.

(a) “Academic employee” refers to any employee categorized as an educational administrator or faculty member pursuant to section 53402.

(b) “Accessibility” means a person with a disability is afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

(c) “Administrator” means a person who is employed in a position designated by the governing board of the district as having direct responsibility for supervising the operation of, or formulating policy regarding, the administration of non-academic functions of a college or district.

(d) “Anti-Racism” and “anti-racist” refers to policies and actions that lead to racial equity.

(e) “Classified administrator” means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

(f) “Competencies” refer to skills, knowledge, abilities, and behaviors all employees must demonstrate and utilize in interactions with students and colleagues, and the performance of their job duties.

(g) “Criteria” refer to the elements used in employee evaluation and tenure review processes to measure performance.

(h) “Cultural Competency” refers to the practice of acquiring and utilizing knowledge of the intersectionality of social identities and the multiple axes of oppression that people from

different racial, ethnic, and other minoritized groups face. The development of cultural competency is a dynamic, on-going process that requires a long-term commitment to learning. In the context of education, cultural competency includes the ability to teach students from cultures other than one's own successfully. It entails developing interpersonal awareness and sensitivities, developing cultural knowledge, and mastering a set of skills for effective cross-cultural teaching.

(i) "DEIA" is an acronym for the terms "diversity, equity, inclusion, and accessibility."

(j) "Diverse" and "diversity" refers to the myriad of ways in which people differ, including the psychological, physical, cognitive, and social differences that occur among all individuals, based on race, sex, ethnicity, nationality, socioeconomic status, religion, economic class, education, age, gender, sexual orientation, marital status, and mental and physical ability.

(k) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.

(l) "Evaluation" refers to a tool to provide and receive constructive feedback to promote professional growth and development.

(m) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions and who are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Cod. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement community college certification qualifications.

(n) "Inclusion" refers to bringing traditionally excluded individuals or groups into processes, activities, and decision and policy making in a way that shares power.

(o) "Minoritize" refers to the subordination of a person or group's status to a more dominant group or its members based on social identities such as race or ethnicity.

(p) "Non-academic employee" means any employee categorized as a classified administrator or staff member.

(q) "Staff" or "staff member" means those employees of a district who are not encompassed within the definitions in subdivisions (a), (c), (e), (k), or (m), whether or not they are part of the classified service as defined in sections 88003 or 88076 of the Education Code.

Note: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002, 87003, 88003 and 88076, Education Code.

## **SUBCHAPTER 1, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 2.**

Subchapter ~~1~~2. Equal Employment Opportunity Programs

## **SUBCHAPTER 2, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 3.**

Subchapter ~~2~~3. Certificated Positions

## **SUBCHAPTER 3, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 4.**

Subchapter ~~3~~4. Full-Time and Part-Time Faculty

## **SUBCHAPTER 4, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 5, AND AMENDED AS FOLLOWS:**

Subchapter ~~4~~5. Minimum Qualifications

### **Section 53400 of article 1 of renumbered subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:**

§ 53400. Scope.

This subchapter implements provisions of the Education Code that govern the minimum qualifications for employment in a community college district as an administrator, a faculty member, or a member of the classified staff. This Subchapter implements and should be read in conjunction with the requirements of Education Code Sections 87001, 87002, 87003, 87356 and 87359 concerning minimum qualifications for community college faculty and administrators. The provisions of this subchapter are effective July 1, 1990.

Note: Authority cited: Sections 66700, 70901, 87001, 87626, 87356 and 87359, Education Code. Reference: Sections 87001, 87002, 87003, 87356, ~~and 87359~~, 88003 and 88076, Education Code.

### **Section 53401 of article 1 of renumbered subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:**

§ 53401. Applicability to Community Services and Contract Classes.

~~Community service classes, and or contract classes which do not award college credit and are not supported by state apportionment that are not credit or non-credit offerings are not subject to exempt from the provisions of this Subchapter, chapter, except those provisions related to the advancement of diversity, equity, inclusion, and accessibility principles. Contract classes which award college credit are subject to this Subchapter, even if they are not supported by state apportionment.~~

Note: Authority cited: Sections 70901~~(b)(1)(B)~~ and 87356, Education Code. Reference: Sections 70901~~(b)(1)(B)~~, 78020, through 78021, 78022, 78023 and 78300, Education Code.

**Section 53402 of article 1 of renumbered subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is repealed:**

~~§ 53402. Definitions.~~

~~(a) "Administrator" means any person employed by the governing board of a district in a supervisory or management position as defined in Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code.~~

~~(b) "Educational administrator" means an administrator who is employed in an academic position designated by the governing board of the district as having direct responsibility for supervising the operation of or formulating policy regarding the instructional or student services program of the college or district. Educational administrators include, but are not limited to, chancellors, presidents, and other supervisory or management employees designated by the governing board as educational administrators.~~

~~(c) "Faculty" or "faculty member" means those employees of a district who are employed in academic positions and who are not designated as supervisory or management for the purposes of Article 5 (commencing with Section 3540) of Chapter 10.7 of Division 4 of Title 1 of the Government Code and for which minimum qualifications for service are specified in Section 53410-53414 or other provisions of this division. Faculty include, but are not limited to, instructors, librarians, counselors, community college health service professionals, disabled student programs and services professionals, extended opportunity programs and services professionals, and individuals employed to perform a service that, before July 1, 1990, required nonsupervisory, nonmanagement community college certification qualifications.~~

Note: Authority cited: Sections 66700, 70901 and 87001, Education Code. Reference: Sections 87001, 87002 and 87003, Education Code.

**Section 53403 of article 1 of renumbered subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is amended to read:**

§ 53403. Applicability of Amendments.



Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if he or she, at the time of initial hire by the district, was qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect. Notwithstanding changes that may be made to the minimum qualifications established in this division, or to the implementing discipline lists adopted by the Board of Governors, the governing board of a community college district may continue to employ a person to teach in a discipline or render a service subject to minimum qualifications, if at the time of initial hire by the district, they were qualified to teach in that discipline or render that service under the minimum qualifications or disciplines lists then in effect.

Note: Authority cited: Sections 70901~~(b)(1)(B)~~ and 87356, Education Code. Reference: Sections 70901~~(b)(1)(B)~~ and 87356, Education Code.

**Section 53425 of article 2 of renumbered subchapter 4 of chapter 4 of division 6 of title 5 of the California Code of Regulations is adopted to read:**

§ 53425. Ability to Work with Diverse Individuals and Communities.

In addition to the category-specific qualifications required by this chapter, all district employees shall demonstrate the ability to work with and serve individuals within a diverse community college campus environment as required by local policies regarding DEIA competencies.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.

**SUBCHAPTER 5, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS RENUMBERED AS SUBCHAPTER 6.**

Subchapter ~~5~~6. Faculty Internship Programs

**A NEW SUBCHAPTER 7, OF CHAPTER 4, OF DIVISION 6, OF TITLE 5, OF THE CALIFORNIA CODE OF REGULATIONS IS ADDED TO READ:**

Subchapter 7. DEIA Competencies and Criteria

§ 53601. Chancellor's Publication of DEIA Competencies and Criteria.

(a) The Chancellor shall adopt and publish guidance describing DEIA competencies and criteria in collaboration with system stakeholder groups. The DEIA guidance shall be

maintained to include current and emerging evidence-based practices developed within the California Community Colleges, or described in DEIA-related scholarship.

(b) The DEIA competencies and criteria identified by the Chancellor shall be used as a reference for locally developed minimum standards in community college district performance evaluations of employees and faculty tenure reviews.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.

§ 53602. Advancing Diversity, Equity, Inclusion, and Accessibility in Evaluation and Tenure Review Processes.

(a) District governing boards shall adopt policies for the evaluation of employee performance, including tenure reviews, that requires demonstrated, or progress toward, proficiency in the locally-developed DEIA competencies or those published by the Chancellor pursuant to section 53601.

(b) The evaluation of district employees must include consideration of an employee's demonstrated, or progress toward, proficiency in diversity, equity, inclusion, and accessibility DEIA-related competencies that enable work with diverse communities, as required by section 53425. District employees must have or establish proficiency in DEIA-related performance to teach, work, or lead within California community colleges.

(c) To advance DEIA principles in community college employment, districts shall:

- (1) include DEIA competencies and criteria as a minimum standard for evaluating the performance of all employees;
- (2) ensure that evaluators have a consistent understanding of how to evaluate employees on DEIA competencies and criteria;
- (3) set clear expectations regarding employee performance related to DEIA principles, appropriately tailored to the employee's classification;
- (4) place significant emphasis on DEIA competencies in employee evaluation and tenure review processes to support employee growth, development, and career advancement;
- (5) ensure professional development opportunities support employee development of DEIA competencies that contribute to an inclusive campus and classroom culture and equitable student outcomes;
- (6) ensure an evaluation process that provides employees an opportunity to demonstrate their understanding of DEIA and anti-racist competencies.
- (7) include proposed or active implementation goals to integrate DEIA principles as a part of the district's Equal Employment Opportunity Plan required by section 53003.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.

§ 53605. Classification-Specific DEIA Obligations.

(a) Faculty members shall employ teaching, learning, and professional practices that reflect DEIA and anti-racist principles, and in particular, respect for, and acknowledgement, of the diverse backgrounds of students and colleagues to improve equitable student outcomes and course completion.

(b) Educational and other Administrators shall include DEIA and anti-racist principles into existing policies and practices, funding allocations, decision-making, planning, and program review processes. These processes shall take into account the experience and performance of students and colleagues of diverse backgrounds, and work to close equity gaps in student outcomes and hiring.

(c) Staff members shall promote and incorporate culturally affirming DEIA and anti-racist principles to nurture and create a respectful, inclusive, and equitable learning and work environment. In conducting their duties, staff members shall respect and acknowledge the diversity of students and colleagues.

Note: Authority cited: Sections 66030, 66050, 66051, 66052, 66053, 66700, 70901, 87356, 87360, 87626, 88003 and 88076, Education Code. Reference: Section 70901, Education Code.