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Date: February 23, 2011

To: Steve Bruckman
        Executive Vice Chancellor of Operations and General Counsel

From: Jonathan Lee
        Staff Counsel

Re: Full-Time Faculty Qualifications for FON Calculations
        Legal Opinion 11-02

Question

Should a faculty member who is employed on a full-time basis, but not on a tenure track, be treated as a full-time faculty member for purposes of calculation for the Faculty Obligation Number ("FON")?

Conclusion

That faculty member should not be counted as a full-time faculty member for purposes of calculation for the FON. The faculty member's status as tenure or tenure track determines whether or not he or she counts as a full-time faculty member in calculating the FON. The number of hours that faculty member works is irrelevant to the analysis.

Background

Education Code section 87482.6 was enacted in 1988 by the Legislature to recognize and make efforts to address the goal that 75 percent of the hours of credit instruction taught in California Community Colleges be taught by full-time instructors. This has come to be known as the full-time/part-time faculty ratio. To that end, any community college district found to have less than 75 percent of its hours of credit instruction taught by full-time instructors was directed to apply a portion of its program improvement allocation to rectify the discrepancy.

Education Code section 87482.6 and California Code of Regulations, title 5, section 51025, enacted later, provide a detailed breakdown of how community college districts are required to rectify the discrepancies in their full-time/part-time faculty ratios. The amount that is to be allocated varies depending on what percentage of instruction is taught by full-time faculty. In the event that a community college district fails to devote its program improvement allocation to

meet full-time faculty instruction, the Board of Governors is required to withhold either 33 or 40 percent of a district's program improvement allocation.

Calculations for determining whether a community college meets its FON are described in title 5, section 53308. A district's full-time faculty percentage is based on the full-time equivalent faculty ("FTEF") attributable to both full-time and part-time faculty. Title 5, sections 53309 and 53310 provide in-depth rules for making the calculations for both groups. Once all the FTEF numbers are determined, section 53008 states that the full-time faculty percentage is derived from dividing the FTEF attributable to full-time faculty by the total FTEF generated at the district.

Analysis

As stated above, the FON is based on determining the percentage of full-time faculty FTEF in relation to overall FTEF generated by full-time and part-time faculty combined. The issue is whether a faculty member who teaches full-time should be characterized as such if not a tenured or tenure track employee.

In 2000, the Chancellor's Office last updated its Budget and Accounting Manual ("BAM") to establish, maintain, revise, and update the uniform budgeting and accounting structures and procedures for the California Community Colleges. This manual can be found on this hyperlink: http://www.cccco.edu/SystemOffice/Divisions/FinanceFacilities/FiscalServices/FiscalStandardsInformation/BudgetandAccountingManual/tabid/381/Default.aspx

In reviewing academic salaries, the BAM makes the distinction between full-time and part-time faculty in its descriptions of academic instructional salaries.

For full-time faculty, BAM, chapter 4, object 1000, Academic Salaries, subsidiary object category 1100 states, in part:

> **"1100 Instructional Salaries, Contract or Regular Status**
> Expenditures for the full or prorated portions of salaries of all employees in contract or regular faculty positions. Contract employee means an employee of a district who is employed on the basis of a contract in accordance with *Education Code* Sections 87601, 87605, 87608, or 87608.5. Regular employee means an employee of a district who is employed in accordance with *Education Code* Sections 87601, 87608, 87608.5, or 87609."

For part-time faculty, chapter 4 of the BAM, object 1300 applies and states:

> **"1300 Instructional Salaries, Other**
> Expenditures for the full or prorated portions of salaries of instructors who have **not** been designated as contract or regular employees. Included are the salaries of instructors designated as temporary employees pursuant to *Education Code* Section 87477 and overload and stipend pay for instructors designated as contract employees or as regular employees."

The distinction that differentiates full-time faculty from part-time faculty is the statute under which the faculty member is employed. It is important to recognize that the use of the term "contract" employee does not refer to whether an employee is under a written contract. Here "contract" is synonymous with probationary. According to the BAM, faculty that are tenured or tenure track are full-time faculty, while those who are not are considered part-time.

Thus, the amount of hours an employee actually works is irrelevant in determining whether that employee is considered to be full-time faculty or not. In the above scenario, the faculty member is employed on a full-time basis working full-time hours. However, since that faculty member is not on the tenure track, that faculty member is not a contract or regular faculty member as described in the BAM. As a result, that faculty member cannot be counted as full-time faculty in calculating the FON for the district. This same reasoning would apply to a faculty member who works fewer hours, but is still tenured or tenure track. That faculty member would count as full-time faculty for calculating the FON.

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