



# Rewriting the Rules and Practices of Administrators in Community Colleges After COVID 19: Part 2

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## Two-Part Series

# We Are in This Together!



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# Meet Today's Team



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# Road Map for Today

- A Return to Normalcy
- What's Ahead: The Economy and the Budget
- Collective Bargaining Considerations
- Shared Governance
- What Comes Next: Community Colleges' Continuity of Education COVID-19 Recovery

## Agenda



# A Return to Normalcy



# Unilateral Emergency Action – “Business Necessity” Defense

- This defense applies only where all of the following are present:
  - Actual Emergency
  - No real alternative to the action taken
  - No time for meaningful negotiations before taking action

*Calexico Unified School District* (1982) PERB Dec. 357, 7 PERC ¶ 14147, p. 571 (ALJ Decision)(adopted by PERB at 7 PERC 14291)
- This theory likely justified unilateral action in March-April.
- It does not provide an ongoing justification for unilateral action as this emergency continues.
- Unilateral action should be viewed as an absolute last resort.

# Unilateral Emergency Action – CBA “Management Rights” Language

- Sample CBA “Management Rights” Language:

“The District retains its right to amend, modify, or rescind policies and practices referred to in this Agreement in cases of emergency.”
- One PERB Regional Attorney concluded this language allowed unilateral reduction in employee compensation – in the face of a severe fiscal emergency.
- There are no reported cases addressing this point.



# Restoration of On-Campus Operations

## **Health Orders**

- Depends on modifications to State/Local health orders.
  - Modification to Statewide Stay-At-Home Order expected within weeks.
  - Modifications to Local health orders should follow; may vary substantially from county to county

# Restoration on On-Campus Operations (cont.)

## **Ongoing Distance Education**

- Title 5, Cal.Code.Reg. § 55206. Separate Course Approval.
  - If any portion of the instruction in a new or existing course is to be provided through distance education, an addendum to the official course outline of record shall be required.

# Restoration on On-Campus Operations (cont.)

## **Ongoing Distance Education (cont.)**

- CCCCO:

- Spring 2020 – Emergency Temporary Distance Education Blanket Addendum.
- All community colleges are required to submit an addendum for Summer 2020 by May 20, 2020.
- Strongly recommended that colleges submit an addendum for Fall 2020 by July 1, 2020.

<https://www.cccco.edu/-/media/CCCCO-Website/Files/Communications/COVID-19/es-20-12-temporary-distance-education-blanket-addendum-summer-and-fall-2020.pdf?la=en&hash=6ADEEEAF8FCA199431F954611437D55CB7906E5E>

# Restoration on On-Campus Operations (cont.)

## **Limited On-Campus Classes/Programs**

- Essential programs: Nursing, Police, Fire, EMT
  - CCCCO: “We strongly recommend that colleges work to sustain courses that directly support the essential infrastructure sectors, especially healthcare and first responders.”

<https://www.cccco.edu/-/media/CCCCO-Website/Files/Communications/COVID-19/es-20-09-preliminary-guidance-for-converting-hard-to-convert-courses-v5-co-a11y.pdf?la=en&hash=504A67781F892F722585A15FB9A9652F9332BBAC>

# Restoration on On-Campus Operations (cont.)

## **Limited On-Campus Classes/Programs (cont.)**

- Laboratories
- Other Classes/Programs
  - Class/Program not amenable to distance education.
  - Students who cannot access distance education

# Restoration on On-Campus Operations (cont.)

- Continued Distance Education
  - Most Lectures
- Not Permitted Until Cure/Treatment Is Found
  - Large events/gatherings
  - Live audience sports

<https://www.gov.ca.gov/wp-content/uploads/2020/04/Update-on-California-Pandemic-Roadmap.pdf>

- Employees
  - Continue to work from home if possible



# What's Ahead

## The Economy and the Budget



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**Gerry Shelton, Partner**  
**Capitol Advisors Group**

# What Are the Economic and Budget Realities?

- Uncertainty is the primary fact of this budget cycle
  - Revenues
  - COVID-19 related costs
  - Will there be a “V”, “U” or “L” shaped recovery
  - The pandemic itself
- Our funding will still be driven mainly by Prop 98
  - We are and will likely be in Test 1 through this budget cycle
  - That means the Prop 98 Guarantee is ~40% of GF revenues
  - The Community Colleges portion of the Guarantee is ~11%
- We are in a recession
  - National GDP fell by ~4.8% for the 1<sup>st</sup> quarter of 2020; likely more in the 2<sup>nd</sup> and 3<sup>rd</sup> quarter
  - Unemployment dramatically up – 3.1 million filed from 3/16 to 4/17
  - General Fund Revenue estimates will be down especially for 2020-21
- CA has/had close to \$21 billion in reserves
- Our budget process will be the same, but also different
  - We will see the May Revision by May 14 and the Constitutionally required Budget by June 15

# What Might Happen to the Current Year Budget?

- Revenues
  - As of 4/1 income tax revenues were more than \$2 billion ahead of the 2019-20 Budget
  - 20% of income tax revenue arrives in April; 18% in May/June
  - April Revenues deferred to July; April = \$5-\$6 billion, rather than \$18.4 billion
- The Governor has committed to trying to hold schools harmless for the 2019-20 year
- Look for a bare bones budget – workload budget minus some things
- DOF and LAO - reviewing all budget tools used in the Great Recession, including deferrals
- The current year budget can only be amended during that fiscal year; any changes will reflect COVID-19 costs, guesses about revenues and fiscal conservatism

# What Might the 2020-21 Budget Look Like?

- Revenues and the economy –According to the Anderson Forecast
  - Recovery projected to start in the 4<sup>th</sup> quarter of 2020, but won't return to a stable 2% growth rate until mid-2022
  - Not a “V” or “L”, but a narrow “U” recovery of 18 months
  - California's unique economy will help and hinder recovery – Tech vs Tourism
- Governor's hold-harmless commitment doesn't extend to the 2020-21 budget year
- Despite uncertainty over GF revenues, informal projections show a \$35 billion drop over the two-year budget period, with almost all of that hitting in the budget year.
- All budget tools are on the table - Deferrals, elimination of previous one-time money, inter-fund borrowing, budget triggers, temporary reductions in base funding suspension of COLAs, “fair share” reductions for basic aid districts, as well as outright cuts.
- Be prepared for an August Revision, and other mid-year 2020-21 revisions

# Collective Bargaining



# Current Considerations

- Virtual Negotiations
  - Pros/Cons
- COVID-19 MOUs
  - Hazard pay?
  - Term of MOU
- Current Negotiations
  - Reopener v. Successor
  - Business Necessity Doctrine



## Potential Bargaining Issues Going Forward

### **COVID-19**

- Expenses and Reimbursement pursuant to Ed. Code section 87032 (liability, equipment, hazard pay, etc.)
- Negotiability of social distancing policies
- Clarifying hours of employment, overtime, work schedules, etc.
- Negotiability of new funding streams related to COVID-19.

### **FISCAL**

- Salary Rollbacks/Furlough Days
- Other budget cuts
- Work Year Adjustments

# Shared Governance



# Shared Governance

- AB 1725
- Education Code sections 70901, 70902:

“Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.”

- Education Code sections 87359, 87360, 87458

## Shared Governance

- 5 CCR 53203 requires that governing boards or their designees must “**consult collegially** with the academic senate when adopting policies and procedures on ‘**academic and professional matters.**’”
- “**Consult collegially**” means that the district governing board shall develop policies on academic and professional matters through either or both of the following methods, according to its own discretion:
  - (1) **Relying primarily** upon the advice and judgment of the academic senate; or
  - (2) “That the district governing board, or such representatives as it may designate, and the representatives of the academic senate shall have the obligation to reach **mutual agreement** by written resolution, regulations, or policy of the governing board effectuating such recommendations.”

# Shared Governance

- When the governing board elects to “**rely primarily** upon the advice and judgment of the academic senate, the **recommendations of the senate will normally be accepted, and only in exceptional circumstances and for compelling reasons will the recommendations not be accepted.** If a recommendation is not accepted, the governing board or its designee, upon request of the academic senate, shall promptly communicate its reasons in writing to the academic senate.”

# Shared Governance

Academic and professional matters (10 + 1)

- (1) Curriculum, including establishing prerequisites and placing courses within disciplines
- (2) Degree and certificate requirements
- (3) Grading policies
- (4) Educational program development
- (5) Standards or policies regarding student preparation and success
- (6) District and college governance structures, as related to faculty roles
- (7) Faculty roles and involvement in accreditation processes, including self-studies and annual reports
- (8) Policies for faculty professional development activities
- (9) Processes for program review
- (10) Processes for institutional planning and budget development, and
- (11) **Other academic and professional matters as mutually agreed** upon between the governing board and the academic senate



# WHAT COMES NEXT – COMMUNITY COLLEGES' CONTINUITY OF EDUCATION COVID-19 RECOVERY



# What we Know About Facilities Use and COVID-19

- California counties are relaxing Shelter in Place restrictions.
- California community colleges are closed through the end of the 2019-2020 school year.
- No physical gatherings for commencements and presumably, no art shows or performances.
- Athletic competition and practices (outside of regularly scheduled classes) for spring sports and any and all nontraditional sports seasons has been canceled.  
[https://www.cccaasports.org/coronavirus/coronavirus\\_info\\_page](https://www.cccaasports.org/coronavirus/coronavirus_info_page)
- Face-to-face recruiting and travel related to recruiting is prohibited until the statewide shelter-in-place order has been lifted.

# Factors Influencing the Immediate Future

- Social distancing at Work
  - New office configurations
  - Telecommuting
  - Distance Learning
  - Zoom Meetings
  - Electronic Board Meetings
- CDC Interim Guidelines cleaning and disinfecting remain applicable.
  - Custodial staffing and training
  - Procurement of supplies for hand cleaning and deep cleaning
  - CDC Interim Guidelines for preventing the spread of COVID-19 in dormitories

# Factors to Consider for the Immediate Future

- How will the college's financial outlook change over a six to 36 month period?
- How will facilities usage change over a six to 36 month period?
- What campus infrastructure improvements necessary to support online education?
- What if any facilities related expenditures can be postponed for a few years?

# Task Force on Reopening Colleges

State Chancellor's Office COVID-19 Update, April 29, 2020:

- Continuity of education in social distancing environment
- Framework on when to begin to open colleges
- Support for faculty and staff as colleges begin to open
- Regulations on physical spacing and anticipated social distancing protocols
- Workforce training for reemployment of workers displaced by COVID-19 impact

# Thank You

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