

**CALIFORNIA COMMUNITY COLLEGES
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June 18, 2001

To: Victoria Morrow
Vice Chancellor
Educational Services and Economic Development

From: Paul Sickert
Assistant General Counsel

Subject: Legal Opinion M 01-08

You have asked whether hours spent teaching non-credit and not for credit community college classes count toward meeting "the 60 percent rule" established by Education Code section 87482.5.

Education Code section 87482.5 provides in pertinent part, "Notwithstanding any other provision of law, any person who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment for regular employees having comparable duties shall be classified as a temporary employee, and shall not become a contract employee under Section 87604." Education Code section 78020 defines "Not-for-credit" as "classes, including community service classes, that are offered without credit and which are not eligible for state apportionments pursuant to Section 84711."

By its own terms section 87482.5 applies to persons teaching adult or community college classes. As we explain in our opinion L 96-23 (attached) community college classes means credit courses and adult classes refers to noncredit classes. As a result, section 87482.5 applies only to persons employed to teach either credit or noncredit classes. Because it applies to only these types of classes, we conclude that hours spent teaching in not-for-credit courses do not count toward the 60 percent rule of section 87482.5.

I hope this is helpful.

PS:sj

M 01-08

Attachment

August 21, 1996

Tom Travis
Association of Community and Continuing Education
c/o Napa Valley College
1088 College Avenue
St. Helena, CA 94574

Dear Mr. Travis:

I am writing in response to your letter of June 18, 1996, in which you asked for our opinion on whether hours of teaching in community services classes count toward meeting the "sixty percent rule" established by Education Code Section 87482.5.

Education Code Section 87482.5 provides, in pertinent part, "Notwithstanding any other provision of law, any person who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment for regular employees having comparable duties shall be classified as a temporary employee, and shall not become a contract employee under Section 87604." Your question is whether hours spent teaching community service classes count in determining whether a person has taught 60 percent of the hours per week considered a full-time assignment. There is not a simple, clear-cut, answer to your question, but we do find two reasons for concluding that hours spent teaching community service classes do not count in this calculation.

First, Section 87482.5 is relevant only to determining the status of "academic employees" and persons teaching community service classes are not academic employees.

The import of Section 87482.5 is that a person teaching less than 60 percent of a full-time assignment must be classified as a temporary employee and cannot become a contract employee pursuant to Education Code Section 87604. Section 87604 provides that "The governing board of a community college district shall employ each academic employee as a contract employee, regular employee, or temporary employee." Therefore, we know that there are three types of academic employees--regular, contract, and temporary--and that Section 87482.5 compels a district to classify persons teaching less than 60 percent of a full-time assignment as temporary academic employees.

The term "academic employee" is defined in Section 87001(a) as "a person employed by a community college district in an academic position" and Section 87001(b) provides that "academic positions" include "every type of service, excluding paraprofessional service, for which minimum qualifications have been established by the board of governors pursuant to Section 87356." Section 87356 requires the Board of Governors to establish minimum qualifications for "service as a faculty member teaching credit instruction, a faculty member teaching noncredit instruction, a librarian, a counselor, an educational administrator, an extended

opportunity programs and services worker, a disabled students programs and services worker, an apprenticeship instructor, and a supervisor of health." In implementing this requirement, the Board of Governors has adopted regulations set forth at Subchapter 4 of Chapter 4 (commencing with Section 53400) of Title 5 of the California Code of Regulations. Section 53401 specifically states "Community service or contract classes which do not award college credit and are not supported by state apportionment are not subject to the provisions of this subchapter."

Thus, persons teaching community service classes are not required to meet minimum qualifications and are not considered academic employees. Since the purpose of Section 87482.5 is to determine the classification of academic employees teaching less than 60 percent of full-time assignment, the provisions of that Section do not apply to persons teaching community service classes. It would, of course, be possible for an academic employee to also teach community service classes, but that assignment is not service in an academic position and the provisions of Section 87482.5 are simply irrelevant.

The Court of Appeal for the First District reached a similar conclusion in *Saraceno v. Foothill-De Anza Community College District*, 127 Cal.App.3d 850, 179 Cal.Rptr. 742 (1st Dist. 1982). In that case the Court held that the time an instructor spent serving as an assistant coach did not count toward meeting the 60 percent rule because the job of assistant coach did not require certification qualifications. So, although *Saraceno* did not deal with community service classes, it does confirm our conclusion that hours worked in positions not requiring minimum qualifications are not to be counted for purposes of the 60 percent rule.

Second, Section 87482.5 refers to persons "employed to teach adult or community college classes" and, although this phrase is somewhat ambiguous, there is reason to believe it does not encompass community service classes. This language alludes to two different types of classes, those for adults, and "community college classes." Although the terminology is not identical, it appears that the first category involves "classes for adults," otherwise known as noncredit courses, authorized pursuant to Education Code Section 78401. To our knowledge the term "community college classes" is not defined in statute, but the courts have construed it to mean credit courses.

Section 87482.5 has its origins in Former Education Code Section 13337.5 (Educ. C. 1959, 13337.5, added by Stats. 1967, c. 705). Prior to the reorganization of the Education Code in 1976 Section 13337.5, which also included material now set forth in Section 87482, read as follows:

"Notwithstanding the provisions of Section 13337, the governing board of a school district maintaining a community college may employ as a teacher in grade 13 or grade 14, for a complete school year but not less than a complete semester or quarter during a school year, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees for grades 13 and 14 during a particular semester or quarter because of the higher enrollment of students in those grades during that semester or quarter as compared to the other semester or quarter in the academic year, or because a certificated employee has been

granted leave for a semester, quarter, or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

"Such employment may be pursuant to contract fixing a salary for the entire semester or quarter."

"No person shall be so employed by any one district for more than two semesters or quarters within any period of three consecutive years."

"Notwithstanding any other provision to the contrary, any person who is employed to teach adult or community college classes for not more than 60 percent of the hours per week considered a full-time assignment for permanent employees having comparable duties shall be classified as a temporary employee, and shall not become a probationary employee under the provisions of Section 13446."

The California Supreme Court had occasion to consider the meaning of Section 13337.5 in *Peralta Federation of Teachers v. Peralta Community College District*, 24 Cal.3d 369, 595 P.2d 113, 155 Cal.Rptr. 679 (1979). The Court held that the fourth paragraph of Section 13337.5, which became Section 87482.5, was distinct and independent from the first three paragraphs because it differed from them in several ways. One difference the Court found significant was that the last paragraph applied "not only to community college instruction but also to adult classes at lower grade levels." (*Id.* at 379.)

This suggests that the Court interpreted the first three paragraphs of Section 13337.5 to apply only to "community college" instruction. The first paragraph of Section 13337.5 refers to persons employed to teach "in grade 13 or grade 14," so the *Peralta* Court seems to have viewed instruction in grades 13 and 14 as synonymous with "community college instruction" or "community college classes." When the Board of Governors revised its regulations on the associate degree effective July 1, 1983 (Title 5, California Code of Regulations, Sections 55800 et seq.), the term "credit courses" began to replace the outdated concept of "instruction in grades 13 and 14." (See also, Legal Opinion O 86-13, equating credit courses with instruction in grades 13 and 14.)

Thus, "community college classes" means credit courses and Section 87482.5 applies only to persons employed to teach either credit or noncredit courses. Therefore, we conclude that hours taught in community service classes do not count toward satisfaction of the 60 percent rule of Section 87482.5.

I hope this information is helpful. If you have any further questions you may call me at (916) 327-5692.

Sincerely,

S/S

Ralph Black
Acting General Counsel

cc: Thomas Nussbaum
Norma Morris
Robert Henry

L 96-23