

Updates on Administrator Retreat Rights

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The passage of AB 1725 (Vasconcellos) in 1988 was a significant milestone in the evolution of the California Community Colleges system. Among the many provisions of the bill that were enshrined in Education Code, AB 1725 defined the specific rights of academic administrators to become first-year probationary faculty under certain conditions or to return to a previously held tenured faculty position after satisfactory service. The parameters and conditions for this process are specified in California Education Code §§ 87454 and 87458. In 1990, the Academic Senate for California Community Colleges published a white paper titled *Administrator Retreat Rights: An Introduction and a Model Policy* (ASCCC, 1990) to guide the development of policies and processes that would enact these provisions of Education Code. The model policy paper outlined effective practices for appropriate involvement of local academic senates in the development and implementation of administrator retreat rights and was the initial guidance used by most local senates.

Education Code offers two paths by which academic administrators can retreat into a faculty position. Ed Code §87454 provides that tenured faculty who move into administrative positions retain their tenured status and can move back to their previous faculty positions when their administrative assignment concludes if the administrative position and the tenured faculty position are within the same district. The second path governing administrator retreat rights is found in Ed Code §87458. This section provides that a person employed in an administrative position “who has not previously acquired tenured status as a faculty member in the same district, shall have the right to become a first-year probationary faculty member” if that person meets a series of requirements. The requirements in this section include a stipulation that local academic senates and governing boards must jointly develop and agree upon the specific local process, that a local academic senate must be allowed to present its views to the governing board before the board makes a decision on a request for retreat, that the administrator who retreats under this provision has completed at least two years of satisfactory service in the district, and that the administrator was terminated for any reason other than dismissal for cause.

In 2006, an appellate court ruling in the case of Wong v. Ohlone College provided additional clarification to the second type of administrator retreat, finding that the right of administrators to retreat to a faculty position “is not absolute” and that colleges may deny the administrator’s request for appointment when no position is available (Wong v. Ohlone College, 2006). In this case, an administrator requested appointment to a probationary faculty position at the termination of his administrative assignment. The administrator was not a previously tenured faculty member at Ohlone college and thus was subject to the second type of retreat under Ed Code §87458. The board rejected the request, as no faculty positions in the discipline for which the administrator was qualified were open. The administrator filed a petition for a writ of mandate to the courts to compel his appointment as a probationary faculty member. The trial court denied the writ, supporting the position of the district that no available faculty positions in the discipline were available, among other rationale. Wong appealed the decision, and the appellate court upheld the original finding.

Until this ruling, the language in Education Code had been frequently interpreted to mean that the right of an administrator to retreat to a faculty position was guaranteed providing that the administrator met all stated criteria and retreated through a process developed in accordance with Education Code §87458, even if the college did not have an open faculty position for which the administrator met the minimum qualifications. The appellate court found that Ohlone College appropriately denied the request because no vacant faculty position existed and that the district was not obligated to create a vacancy to accommodate the administrator. In particular, the appellate court focused on the language in the statute that states that the administrator “shall have the right to become,” noting that in this instance “shall” governs the rights of the administrator but does not mandate the outcome of placement by the district. The appellate decision further states that if the legislature had intended for districts to have no discretion based on other factors, the language would have read “shall become,” thus requiring placement without other considerations (Wong v. Ohlone College, 2006).

While this appellate court case was decided in 2006, not all districts have updated their local policies and processes to reflect the substance of this ruling, and the model policy outlined in the 1990 ASCCC paper on retreat rights likewise does not reflect this clarification. The model policy template published by the Community College League of California (CCLC), numbered BP 7250, was updated in 2017 to reflect the finding of the appellate court by citing the case in the reference section and including the following condition as legally required language: “The district has a vacancy for which the administrator meets minimum qualification.” In 2021, the CCLC model policy template for BP 7250 was revised again to further clarify what constitutes a vacancy. The final recommended language in the template states, “The District has a vacancy for which the administrator meets minimum qualifications. A vacancy means that a position is available within the District, and the District has appropriately allocated, budgeted, and prioritized in accordance with District practice.” While not every district subscribes to or uses the CCLC model policy, this addition is a good starting point for incorporating this limit on administrator retreat rights.

Academic senates should check their local board policies and procedures to ensure that this clarification of the law is explicitly included and review more generally the currency of the procedures to ensure that they are consistent with current district practices. Under Education Code §87458, the process for administrator retreat “shall be developed and agreed upon jointly by representatives of the governing board and academic senate.” This substantive update to the application of this statute requires revision of local practices. Education Code is clear that this matter is subject to consultation between the board and the academic senate. Local senates should work through their established governance processes with their governing boards to ensure that this important clarification is reflected in local policies and procedures.

REFERENCES

Academic Senate for California Community Colleges. (1990). Administrator Retreat Rights: An Introduction and a Model Policy. https://www.asccc.org/sites/default/files/publications/Retreat_0.pdf (https://www.asccc.org/sites/default/files/publications/Retreat_0.pdf).

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