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June 23, 2005

To: The Kern Community College District and
the West Kern Community College District

From: Schools Legal Service

Re: Adoption of New Faculty Hiring Policies and Procedures Requires
Agreement Between College Academic Senate and the District Board

On June 8, 2005, the Fourth District Court of Appeal (California) held that, in initially developing **and subsequently changing** new faculty hiring policies and procedures, the District must obtain the consent of the faculty Senate.

The court held that, in considering the plain language of Education Code section 87360¹ and the legislative history of the statute, the Legislature intended that the faculty, through the academic Senate, has an ongoing role in developing and consenting to faculty hiring policies and procedures. In the event specific changes cannot be agreed upon, the existing policy must remain in effect.

In so ruling, the appellate court **rejected** the trial court's interpretation of Education Code section 87360 to the effect that, while academic senates must be provided a "meaningful opportunity" to participate in the process, they do not have a "de facto veto" or the right to frustrate District proposed or initiated reform. On the contrary, according to the appellate court:

The bottom line is that the Legislature granted the Senates a role equal to the District's in developing and adopting faculty hiring policies. They undoubtedly contemplated a balance between the interests of each party and that compromise would be required.

If you would like further information concerning the appellate court's decision, please call General Counsel Dwaine L. Chambers.

DLC/cp

¹Education Code section 87360 provides:

- (a) In establishing hiring criteria for faculty and administrators, district governing boards shall, no later than July 1, 1990, develop criteria that include a sensitivity to and understanding of the diverse academic, socioeconomic, cultural, disability, and ethnic backgrounds of community college students.
- (b) No later than July 1, 1990, hiring criteria, policies, and procedures for new faculty members shall be developed and agreed upon jointly by representatives of the governing board, and the academic senate, and approved by the governing board.
- (c) Until a joint agreement is reached and approved pursuant to subdivision (b), the existing district process in existence on January 1, 1989, shall remain in effect. (Education Code section 87360.)