

**SPECIAL MEETING OF THE BOARD OF TRUSTEES  
DALLAS COUNTY COMMUNITY COLLEGE DISTRICT  
AND RICHLAND COLLEGIATE HIGH SCHOOLS**

**District Office  
1601 South Lamar Street  
Lower Level, Room 007  
Dallas, TX 75215  
Tuesday, March 2, 2010  
9:00 AM**

**AGENDA**

- I. Certification of Posting of Notice of the Meeting Wright Lassiter
  
- II. Legal Issues in Community Colleges – a trustee development seminar conducted by Vice Chancellor and Legal Counsel for Texas State University System, Dr. Fernando Gomez
  
- III. Executive Session: The Board may conduct an executive session as authorized under §551.074 of the Texas Government Code to deliberate on various personnel matters, including continuation of annual evaluation of the chancellor.

As provided by §551.072 of the Texas Government Code, the Board of Trustees may conduct an executive session to deliberate regarding real property since open deliberation would have a detrimental effect upon negotiations with a third person.

The Board may conduct an executive session under §551.071 of the Texas Government Code to seek the advice of its attorney on a matter in which the duty of the attorney under the Rules of Professional Conduct clearly conflict with the Open Meetings Act.

- IV. Adjournment of Special Meeting

**CERTIFICATION OF POSTING OF NOTICE MARCH 2, 2010  
SPECIAL MEETING OF THE  
DALLAS COUNTY COMMUNITY COLLEGE DISTRICT  
AND RICHLAND COLLEGIATE HIGH SCHOOLS  
BOARD OF TRUSTEES**

I, Wright L. Lassiter, Jr., Secretary of the Board of Trustees of the Dallas County Community College District, do certify that a copy of this notice was posted on the 25<sup>th</sup> day of February, 2010, in a place convenient to the public in the District Office Administration Building, and a copy of this notice was provided on the 25<sup>th</sup> day of February, 2010, to John F. Warren, County Clerk of Dallas County, Texas, and the notice was posted on the bulletin board at the George Allen Sr. Courts Building, all as required by the Texas Government Code, §551.054.



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Wright L. Lassiter, Jr., Secretary

## ***Duties and Ethics of Public Sector Board Members under Texas Law***

### **General Authority and Duties**

1. ***Committee Authority*** - Board committees (e.g., academic, finance and audit, planning and constructions, rules and regulations) represent the Board and act on its behalf in preparation for Board meetings. They have authority to report and recommend policy initiatives to the Board.
2. ***Duty of Loyalty*** - A Board member must be responsible and loyal to the interests of the institution he or she was appointed to help govern. A member does not represent any other constituency, person, or entity that conflicts with those interests.
3. ***Duty of Unity*** - No single member of the Board may speak for or otherwise bind the Board, unless authorized to do so by vote of a majority of the Board pursuant to an action taken in open or public session at a duly-constituted meeting of the Board.
4. ***Duties of the Chair*** - The Chair may speak for and represent the Board under a general grant of authority but may not take positions he or she knows to be contrary to Board policy, unless first authorized to do so by the Board.

### **Conduct at Board Meetings**

5. ***Right to Speak*** - A Board member has the right to state his or her views, opinions, positions, and recommendations but should do so professionally and respectfully in the procedural manner established or directed by the Chair.
6. ***Duty to Listen*** - A Board member should listen respectfully to the views, opinions, positions, and recommendations of others, even those with whom he or she disagrees.
7. ***Duty to Respect Board Decisions*** - A Board member should abide by and not subvert lawfully-taken Board decisions. If, as a matter of principle, a Board member must articulate a minority opinion, he or she may do; however, such opinion should be announced to the Board through the Chair, who may call upon the dissenting Board member to articulate his or her opinion. In any case, the Board member must refrain from subverting or otherwise derogating to outside parties lawfully taken Board decisions.
8. ***Duty of Confidentiality*** - A Board member may not report the Board's executive session discussions, deliberations, or statements of Board members (including his or hers) to any third party without the Board's permission.

## **Conflicts of Interest**

9. ***Gifts and Bribes*** – A Board member may not accept or solicit any gift, favor or service that might reasonably tend to influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence his or her official conduct. Nor should he or she knowingly solicit, accept or agree to accept any benefit for exercising or having exercised his or her official powers or duties in favor of another.
10. ***Business or Professional Activities*** – A Board member may not engage in employment or in business or professional activities that might reasonably require or induce him or her to disclose confidential information acquired by virtue of his or her official position.
11. ***Employment*** – A Board member may not accept employment or compensation that could reasonably be expected to impair his or her independence of judgment in the performance of his or her official duties.
12. ***Investments*** – A Board member may not make personal investments that could reasonably be expected to create a substantial conflict between his or her private interest and the Board's interest; nor, may he or her usurp an opportunity of the Board to profit or benefit from any person or entity.

Texas *Government Code, Chapter 572.051*

## **Relationships with Chancellor, Staff and Presidents**

13. ***Executive's Role*** – A Board member must respect the role of the system chancellor or university president as the chief executive officer, respectively, for the system or university. The chief executive officer is charged with carrying out policy set by the Board; and, while he or she must be responsive to Board members, he or she is not obligated to honor policy initiatives set by individual Board members that have not been authorized by the Board.
14. ***Staff and Presidents*** – Board members customarily should not deal directly with system or university staff, except through specific or general grant of authority from the chancellor or president and should expect those staffs to keep the chancellor or president informed of such conversations.
15. ***Local and Other Committees*** – Board members should timely inform the chancellor, the president, and the Chair of scheduled committee meetings and keep them informed of the proceedings of meetings they are unable to attend.
16. ***Supervision*** – The chancellor or president reports to the Chair day-to-day and to the Board. The relationship should be collegial and professional.

# Board Briefs

## Legal Issues in Community Colleges

### Special Interest:

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## Scope and Complexity of Legal Issues

This issue consists of excerpts from the monograph published in 2004 titled *Legal Issues in the Community College*, edited by Robert C. Cloud, Number 125 in the series published by Jossey-Bass called *New Directions for Community Colleges*, which is edited by Arthur M. Cohen and Florence B. Brawer.

The monograph informs

readers about the scope and complexity of legal issues affecting American community colleges.

Of the nine chapters in the monograph, the first seven are addressed in this newsletter.

The topic of chapter 8 is risk management, to which the entire December 2009 issue of Board Briefs will be dedicated.

Chapter 9 in the monograph is an annotated bibliography of legal resources.

## Student Rights, Safety, and Codes of Conduct

*Excerpts from chapter written by Ralph D. Mawdsley*

Courts of law have consistently found that the relationship between students and their postsecondary institutions is a contractual one – a legal relationship based on mutually enforceable written or oral promises.

Students have rights as consumers, rights for procedural and substantive due process in codes of student conduct, and various federal statutory rights if the college in which they are enrolled receives federal funds, which practically all colleges do.

In the wake of the shootings at Columbine High and Virginia Tech, student safety has become a major concern. Awareness of problem areas and problem students requires that colleges develop strategies for permitting students and employees to report their safety concerns. With reporting comes a concomitant responsibility to investigate the reports, keeping in mind that the individuals being investigated will have due process rights. Failure to act in response to safety concerns can result in

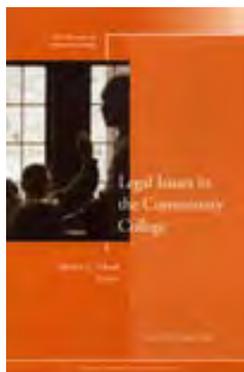
liability if a student or an employee is able to prove that action would have prevented an injury. College officials have a delicate balancing act in protecting both safety and due process.

Primarily, though, students are on the campuses of community colleges because they are purchasing educational services. They have a contractual right to have courses delivered as promised in catalogs, brochures, and syllabi.



## Accommodating Students with Disabilities

*Excerpts from chapter written by Constance S. Hawke*



*Legal Issues in the Community College, 2004, edited by Robert C. Cloud*

The Rehabilitation Act of 1973 and Americans with Disabilities Act (ADA) of 1990 fueled the influx of students with disabilities into higher education. A conservative estimate is that over 70% of students with disabilities are enrolled in community colleges.

The most frequently mentioned disabilities among community college students are learning

disabilities, mobility or orthopedic impairments, health impairments, mental illness, and emotional disturbance. Smaller percentages of students report hearing impairments, visual impairments, and speech or language impairments.

At least one survey has indicated that while approximately 8 percent of community college students reported a

disability, only half that number requested an accommodation.

Disabled students attending community colleges are increasingly sophisticated about their rights, having graduated high school under the auspices of the Individuals with Disabilities in Education Act (IDEA).

## Employment Issues

*Excerpts from chapter written by Todd A. DeMitchell*

Education is a people-intensive enterprise, and this is particularly true of community colleges. As noted by Cohen and Brawer in 2003, "Instruction is stubbornly labor intensive." Therefore, the organizational efforts to recruit, retain, and when appropriate remove employees are critical to

the success of the community college.

Four categories of employment issues in community colleges are 1) federal discrimination statutes, 2) affirmative action, 3) performance evaluation, and 4) considerations for effective employment policies, practices, and

attitudes.

Because employment litigation often involves a mix of state and federal claims, knowledge of specific state laws is necessary for those who make employment policies and decisions.



Robert C. Cloud, Ed.D.  
Editor, *Legal Issues in the Community College*  
Professor  
Dept. of Higher Education  
Baylor University

## Collective Bargaining

*Excerpts from chapter written by Richard J. Boris*

Collective bargaining has deep roots in both two-year and four-year public institutions. In 1993, Rhoades reported that 61% of public institutions of higher education were unionized.

Although all academic collective bargaining focuses on traditional union issues of compensation and personnel matters, there

is no template flexible enough to provide a model contract. This is particularly true for community colleges, where the settings, funding sources, and internal and external governance structures vary widely. However, there are several common denominators in negotiated agreements for tenured faculty, including

automatic cost-of-living adjustments, access to formal grievance procedures, specified maximum class enrollments, and committee and non-classroom responsibilities.

Most community college agreements are reopened and renegotiated every two to three years, keeping them current and viable.

## Academic Freedom and Tenure

*Excerpts from chapter written by Richard Fossey and R. Craig Wood*

Tenure and academic freedom are closely connected.

Academic freedom is the freedom of faculty members to research, write, teach, and publish without fear of retribution based on the unpopularity of their ideas. It is akin to a public employee's right to free speech under the First Amendment of the U.S. Constitution.

Tenure is the right of a faculty member to continuous employment, which cannot be terminated without adequate cause (generally including financial exigency) or without due process. In the public sector, tenure is a property right, which under the

Fourteenth Amendment cannot be taken away without affording due process.

Over the years, the concepts of academic freedom and tenure have been the subject of litigation, and a body of law has developed that shows how these terms are recognized and understood in higher education.

Lower court rulings about academic freedom can be divided into four categories: academic freedom rights outside the classroom, academic freedom rights inside the classroom, the academic freedom to assign grades and assess students, and academic rights

concerning institutional evaluations of a faculty member.

Editor's note: Of interest to DCCCD is whether it is possible for a college to have a tenure policy in place even though no formal tenure system has been adopted. According to Fossey and Wood, the Supreme Court has ruled yes, that a college may have a de facto tenure system if it has policies and practices in place that give a teacher a reasonable and objective belief that he or she enjoys the benefits of tenure.



## Copyright and Technology-Mediated Instruction

*Excerpts from chapter written by Kenneth D. Salomon and Michael B. Goldstein*

Intellectual property is at the core of education at all levels, regardless of whether instruction is delivered in a physical classroom or electronically. At its most fundamental level, a professor's lecture notes are his or her intellectual property. The authoring of textbooks is the lifeblood of education.

The intellectual property implications of technology-mediated instruction are at once a natural extension

of customary rules and an entirely new legal and academic environment.

Boiled down to its essence, copyright protects the right of authors to be rewarded for their works and the right of the public to have access to them. An author's original expression of ideas and facts that is fixed in a tangible medium is subject to copyright protection, whether the work is published or unpublished.

The most relevant laws are 1) the 1976 Copyright Act,

and 2) the Technology, Education, and Copyright Harmonization (TEACH) Act of 2002.

The law has always lagged behind technology, and copyright law is the poster child of that rule. There will continue to be a need to adapt both the underlying law and institutional policies to maintain the essential balance between protecting authors' rights and ensuring access.

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*"The law has always lagged behind technology, and copyright law is the poster child of that rule."*

## Current Governing Board Legal Issues

*Excerpts from chapter written by Timothy K. Garfield*

### **INTRODUCTION**

The community college governing board has the ultimate legal authority for the management of the college. Regulations applicable to governing boards are a matter of state (not federal) law, and they vary widely from state to state. Thus, the guidelines in this chapter are necessarily general in nature.

The increased complexity of the community college environment underscores the need for boards to establish policy and oversee administrators who implement policy rather than micromanage college operations. Governing board members are unlikely to stay current with the myriad laws, regulations, administrative decisions, and cases that affect management decision making; nor are they usually able to gather the detailed factual information that is required for sound executive decisions. Consequently, a governing board's most critical action is the selection of a top administrator who will make or oversee the operational decisions of the college.

Whatever the exact scope of the role that a given governing board plays in the operation of a college, it is clear that the legal authority to act is granted to the board as an entity; individual board members have no authority to act independently. This is true even of board officers.

### **RIGHTS OF INDIVIDUAL BOARD MEMBERS**

Individual board members have certain rights to information, based on the commonsense principle that specific information is necessary in order to cast an informed and wise vote on issues brought before the board or in order to determine what issues the board should consider. Individual board members typically have the right to review all of the college's or district's financial records, since the fiscal solvency of the institution is a board responsibility. Issues may arise, however, if individual board members request personnel or student records.

State and federal student privacy laws limit student record access to college officials who have a "legitimate educational interest" in obtaining the information contained in the records. Personal conflicts with students and employees are not a sufficient basis on which to obtain access to such records. A similar standard would likely be applied to personnel records, meaning that an individual board member would not have the right to peruse employee personnel records at random.

The right of an individual board member to attend an internal meeting between district employees or meetings of district employees with students has been questioned. Generally speaking, there appears to be no legal basis whereby an individual board member could insist on being present at such an internal meeting.

### **INTERNAL BOARD RELATIONS**

One fact does not seem to vary from state to state or district to district: disputes among board members are a daily fact of life. Experienced observers recognize that smooth internal board relations facilitate sound administration of college business. Less time is wasted preparing information for board factions to use in advancing their position, and managers can focus on important issues rather than trying to persuade board members to work collegially. Although the dynamics of intraboard relationships depend to a large degree on the personalities of the board's members, it may be useful for a board to adopt a code of ethics that, while not legally enforceable, board members are expected to follow. Such a code serves as a written reminder that

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*"A governing board's most critical action is the selection of a top administrator who will make or oversee the operational decisions of the college."*

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*"One fact does not seem to vary from state to state or district to district: disputes among board members are a daily fact of life."*

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board members serve to advance the interests of the college and not their personal agendas or agendas of a single constituency. The existence of such a code was a significant factor in a Wyoming board's censure of one of its members for attempting to undermine a final majority board decision.

Newly elected board members often have little understanding of their actual role as individual board members. New member orientation (often provided by state school board associations) helps new members learn to become well informed on issues before voting, to abide by collective board decisions regardless of how he or she voted, and similar principles of "good boardsmanship."

### **EXTERNAL BOARD RELATIONS**

The overriding principle governing external board relations is that the board speaks only as a whole. Individual board members should not attempt to speak for the board. When matters of public interest arise and it is likely that the media or civic groups will be asking for information from the board, one member should be designated to speak for the board. The remaining board members should refer all inquiries to the spokesperson. This avoids conflicting statements that can cause both legal and political problems for the board and allows the spokesperson to become thoroughly knowledgeable about the topic, resulting in accurate information being presented to the public.

Similarly, individual board members should not get involved in college business matters unless they have been expressly delegated specific authority to do so by the board. Board members should be discouraged from dealing with any outside entities unless express authority to do so has been granted by the board.

### **BOARD MEMBER LIABILITY**

A frequent concern of board members is personal liability for actions taken in their official capacity in managing the college or district. Though on occasion a plaintiff will choose to sue individual board members, it is not common for individual members to be held personally liable. Most states provide a degree of immunity to board members for discretionary actions taken in good faith in the normal course of business. Most states provide for indemnification of board members against liability stemming from actions taken by the board that were within the scope of their authority and taken in good faith, even if the action is later held to be legally incorrect.

Indemnification statutes are based on the policy that boards must be able to take action that is in the best interests of their institution without being overly concerned that personal liability could wipe out an individual member because of one action of the board. Similarly, nearly every institution will provide and pay for a legal defense for any board member who is named in a lawsuit as a result of actions taken by the board. The only exception to this principle occurs when a board member takes action in bad faith or maliciously, as when a member defames a member of the college community outside of a governing board meeting. Simply expressing personal animosity toward an individual outside of the board meeting context would generally be beyond the scope of a board member's duties and could result in personal liability that may not be indemnified.

### **CONFLICTS OF INTEREST**

A conflict of interest arises when a governing board member personally benefits from an action taken by the board. The law recognizes that an impairment of impartial




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## DCCCD

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judgment can occur in even the most well-meaning board members when their personal economic interests are affected by the business they transact on behalf of the public entity. Most states have specific regulations precluding such actions. Such regulations often include criminal penalties.

### **PUBLIC MEETINGS**

Every state has sunshine laws requiring that meetings of local government agencies be open to the public. Exceptions are usually provided for discussions of personnel matters, conferences with legal counsel concerning litigation, and matters such as the acquisition of real property.

Invariably, governing boards face the problem of confidential information discussed in closed session being leaked to the media or interested parties by a board member. This seems to happen most commonly where a board member is closely aligned with a subset of college employees. Unfortunately, most state laws do not provide the remaining board members with effective remedies for such unprofessional action.

### **PUBLIC RECORDS ISSUES**

All 50 states have public records laws which make most college records accessible for inspection by members of the public upon request. It may come as a surprise to many board members that e-mail messages are as much subject to disclosure as messages on paper.

### **FINANCIAL RESPONSIBILITIES**

Boards carry out their responsibility for the financial well-being of the college by adopting the annual budget and monitoring revenue and expenses during the budget year. The actual supervision of expenditures is normally delegated to college administrators. The board's most important responsibility here is to ensure that adequate controls are built into the budget-and-spend system.

### *About Our Organization...*

*The mission of DCCCD is to equip students for successful living and responsible citizenship in a rapidly changing local, national and world community. Educational opportunities are offered without regard to race, color, age, national origin, religion, sex, disability or sexual orientation. Equal educational opportunity includes admission, recruitment, extra-curricular programs and activities, access to course offerings, counseling and testing, financial aid, employment, health and insurance services, and athletics.*

### **Takeaways from this Issue**

#### **ACROSS**

- Board members serve to advance the interests of the \_\_\_\_\_ and not their personal agendas or agendas of a single constituency.
- The overriding principle governing external board relations is that the board speaks only as a \_\_\_\_\_.
- \_\_\_\_\_ protects the right of authors to be rewarded for their works and the right of the public to have access to them.
- \_\_\_\_\_ have rights as consumers.

#### **DOWN**

- A governing board's most critical action is the \_\_\_\_\_ of a top administrator who will make or oversee the operational decisions of the college.
- Academic freedom is akin to the public employee's right to free \_\_\_\_\_ under the First Amendment.

