

Lawful Strategies for Advancing DEI in Faculty Hiring: The Essential Role of Academic Senates

Santa Rosa Junior College / March 19, 2021

Presented by: Laura Schulkind

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Lawful Strategies for Advancing DEI in Faculty Hiring: The Essential Role of Academic Senates

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Agenda

1. The Legal Context
2. Overview of legally compliant strategies
3. Specific strategies to promote DEI hiring that require Senate expertise and leadership
 - Fostering an inclusive work/academic environment
 - Updating faculty hiring procedures
 - Updating equivalency process
 - Updating faculty job announcements

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The Legal Context

Legal Snapshot: CCDs & Employment Discrimination

- The prohibition against employment discrimination isn't new
... but
- What constitutes unlawful discrimination has changed:
 - Equal opportunity → Equal treatment

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**Legal Snapshot:
CCDs & Employment Discrimination**

The Vocabulary Changed:

- Affirmative Action → EEO
- Affirmative Action Hiring → Diversity Hiring
- Underrepresented Groups → Monitored Groups

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**Legal Snapshot:
CCDs & Employment Discrimination**

The Concepts Have Shifted:

- Improving representation of specific underrepresented groups to remedy a wrong (i.e. “equity” in employment/education/contracting)
- ↓
- Creating “diversity” for the benefit of all
- ↓
- Most recently: creating a workforce that improves access & opportunity for students from historically underserved communities

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**Legal Snapshot:
CCDs & Employment Discrimination**

But...the legal duty to identify and correct underrepresentation continues to apply

- Expanded and diffused ideas about the nature & benefits of “diversity” don’t relieve CCDs of their obligation to identify and address underrepresentation in employment.

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Federal/State Anti-Discrimination Laws

- Title VII
- Fair Employment and Housing Act (FEHA)
- Title IX
- ADA
- ADEA

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Federal/State Anti-Discrimination Laws

- **Employment Discrimination includes:**
 - **Refusal to hire***
 - Rejection from training program
 - Discharge from employment/training program
 - Any decision affecting compensation, terms, conditions, privileges

... If based on a protected status

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Federal/State Anti-Discrimination Laws

- **No Discrimination on basis of:**
 - Sex/Gender (including gender identity/gender expression)
 - Genetic Information
 - Race
 - National Origin
 - Hair texture/hairstyles associated w/particular race/national origin
 - Religious Creed
 - Color
 - Ancestry
 - Physical/Mental Disability, Medical Condition
 - Marital Status
 - Age
 - Sexual Orientation
 - Military and Veteran Status

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EEO In California

Proposition 209*

- Prohibits “preferential treatment” on basis of:
 - Race
 - Sex
 - Color
 - Ethnicity
 - National Origin
- In Public:
 - Employment
 - Education
 - Contracting

*Cal. Const. Art. 1, Sec. 31

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Prop 209 & The Courts*

Targeted recruitment = unlawful preference*

**Hi-Voltage v. City of San Jose*
**Connerly v. State Personnel Board*

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**Prop 209:
Legislative Response**

- **Recruitment may include:**
 - “Focused outreach and recruitment” of women and minorities*
 - Outreach that “should result” in diversification**

*Gov. Code 11139.6(a)(1)
**Gov. Code 11139.6(d)

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**Prop 209:
Legislative Response**

- **General recruitment includes*:**
 - General circulation media
 - Local/Regional media
 - Non-English media
 - Directed to women, minorities low income groups
 - General-market job fairs
 - Job fairs with high participation of women/minorities
 - Personal contacts

*Gov. Code 11139.6(e)

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**Prop 209:
Legislative Response**

- **Recruitment *must* include:**
 - Outreach to economically disadvantaged*

*Gov. Code 11139.6(a)(3)

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**Prop 209:
Legislative Response**

Prop 209: Legislative Response

- Funding contingent on:
 - “Each district employer ***shall*** commit to sustained action to devise recruiting, training and advancement opportunities that will result in equal employment opportunities”*

* EC 87101(c)

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Title 5—Enforcing Regulations

District must:

- Take steps to eliminate underrepresentation based on protected status (Title 5, § 53006)
 - Compares % of a “monitored” group in a job category with their “projected representation” based on availability in the workforce. Representation below 80% = underrepresentation.
- Implement strategies that demonstrate on-going, institutional commitment to diversity and equal employment opportunity. (Title 5, § 53024.1)

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Education Code § 87360

- Academic & Administrative applicants must demonstrate:
“sensitivity to and understanding of the diverse academic, socioeconomic, cultural, and ethnic backgrounds of community college students.”

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The Hiring Challenge

3 Principles for Lawful EEO Hiring:

1. Protected status of candidates is *never* a factor
2. Infusing a commitment to diversity into the hiring process **does not** involve lowering standards
3. Infusing a commitment to diversity into the hiring process **does** involve assessing candidates against job-related criteria, including:
 - Eliminating irrational (i.e. not job-related) barriers
 - Expanding/updating what you consider to be job related

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The Hiring Challenge

- Creating “equal access” requires more than obeying the legal prohibition against discrimination
 - Legally, it includes identifying and correcting underrepresentation
 - Strategically, it requires deliberate and purposeful action
- “Affirmative Action” is not illegal under Prop. 209.
 - Think of “affirmative action” to mean “purposeful action”
 - Purposeful action includes a range of lawful strategies
- Purposeful action is what distinguishes “nondiscrimination” from anti-racism

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Lawful Strategies For Promoting Workforce Diversity

Four basic areas:

- 1. On-going: Workplace/educational environment**
 - Create workplace environments attractive to nontraditional candidates, so they come...and stay
- 2. Pre-recruitment: Update who you are looking for**
 - Exclude irrational barriers. Ask: is this desirable qualification a reliable predictor of performance?
 - Include *job-related* criteria that value current/global “KSAs”

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Lawful Strategies For Promoting Workforce Diversity

Four basic areas (con't):

- 3. Recruitment**
 - Implement recruitment strategies designed to build diverse, qualified applicant pools
- 4. Selection Processes**
 - Use diverse, well-trained, curious hiring committees
 - Implement hiring procedures designed to “interrupt” unconscious bias in the decision-making process

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ACADEMIC SENATE: PARTNER IN FOSTERING AN INCLUSIVE WORK ENVIRONMENT

Promoting an Inclusive Work Environment

- Requires:
 - Leadership & “buy-in” at the top
 - Board
 - Administration
 - Visible support for diversity, equity & inclusion
 - And...*
 - Institutional commitment – at all levels
 - Unions
 - Senates

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Promoting an Inclusive Work Environment

- **Inclusive work cultures and retention**
 - Mentoring programs
 - Opportunities for growth
 - Leadership opportunities
 - Environments within colleges, campuses, departments
 - Access

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UPDATE FACULTY HIRING PROCEDURES

Updating Hiring Procedures: The DEI Lens

Committee Formation and Role

- Process to facilitate forming diverse screening/hiring committees
 - H.R. authority to request alternate appointments
 - Identifying non-discipline specific KSAs that can be assessed by a broader group of employees
 - Make hiring committee training widely available (e.g. FLEX)
- H.R. authority to disallow screening/hiring committee members due to conflicts of interest
- Process to ensure all committee members are trained
- Best practice: MQs checked by H.R., not hiring/screening committees
 - This is a nondiscretionary review
 - Frees up committee time for the deep work.
- Reference checks: reserved for finalist, not a committee role.

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Updating Hiring Procedures: The DEI Lens

First-tier screening bias “interrupters”

- No names
- No recommendations
- No transcripts
- Questions (application and interview) include a *job-related* inquiry into serving underserved populations
- Rating form must be used in reviewing written applications & interviews
- Use of model answers

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Updating Hiring Procedures: The DEI Lens

Paper Screening Process

- Decide weight to give preferred criteria using an equity lens
- Design application questions that
 - Seek evidence of candidates currency of knowledge
 - To the extent job related seek evidence of global knowledge in candidate’s field
 - Seek evidence of candidate’s knowledge/skills/abilities serving historically underserved communities or marginalized peoples

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Updating Hiring Procedures: The DEI Lens

Paper Screening Process

- Design inclusionary, curious process that errs on the side of *granting* interviews rather than *excluding* from interviews.
 - Bands or ranges of scores v. rigid cut scores
 - Beware false predictors of performance
 - When do typos matter?
 - When does grammar matter?
 - What might polished formatting measure other than job-related KSAs?

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Updating Hiring Procedures: The DEI Lens

Interview process—preparation

- **Develop a rating form**
 - Rate each question separately
 - Rate only on what the question was intended to measure
 - Include everything the committee intends to consider in assessing candidates
 - Consider including “respectful engagement of all committee members”
- **Develop job-related questions designed to assess candidates’ deep knowledge**
- **Assess candidates’ “sensitivity to diversity”**
 - In ways that are uniquely related to the specific position
 - In multiple ways
 - Treat as an *essential* job qualification not a *minimum* qualification

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Updating Hiring Procedures: The DEI Lens

Interview process—preparation

- Use Q & A for what it is able to assess: Deep, job related knowledge
- Assess skills through demonstration component
- Use hypothetical rather than experience based questions—or a hypo/experience hybrid
- Develop model answers

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Updating Hiring Procedures: The DEI Lens

Interview process—in the interview

- **Demystify the process**
 - Process should be robust—not a gauntlet
 - Be transparent: length of interview, number of questions, time per question
 - Provide questions in writing
 - Consider posting questions outside the door
 - Use a “soft” opening question that is unscored

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Updating Hiring Procedures: The DEI Lens

Interview process—ranking & recommendations

- Establish a minimum number to be recommended to hiring authority [at least 3]
- Use bands and ranges not rigid cut scores
- Provide recommended candidates unscored

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Updating Hiring Procedures: The DEI Lens

DEI Task Force Report recommendation:

- Host open houses for prospective candidates with panels of current faculty and deans.
- “Tier 1” Activity: HR, Administration, Department Chairs and Student Services to collaborate on updating faculty hiring procedures and methods to include open houses.

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UPDATE EQUIVALENCY PROCESS

Equivalency Process Overview

- An alternative process to determine an applicant's qualifications for a faculty position, other than meeting the State-established MQs.
- All districts must have an equivalency process.
- Process must be jointly developed by local governing board and academic senate.
- Districts must rely primarily on their academic senates in individual determinations of equivalency.

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Equivalency Principles

- Equivalency does *not* lower the minimum qualifications for hiring.
- Equivalency refers to any qualifications that are at least equal to the state-adopted minimum qualifications for a particular discipline.
- Equivalency applies where applicants provide evidence that their education and experience is equivalent to the minimum qualifications for the position.

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Equivalency Principles

- Equivalency to a required Master's may be demonstrated through experience, not just a comparable Master's degree, but:
 - Applicants must show their breadth of coursework or experience is equal to the *general education* component of an earned degree; and
 - Applicants must show they have attained the skills and knowledge equivalent to the depth of knowledge provided by the required Master's degree.
 - Eminence should not be used as the sole criterion.

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State Chancellor Equivalency Process Guidance

State Chancellor equivalency process memorandum (12/16/20):

- Equivalency processes provide a mechanism to improve faculty diversity.
- Suggested framework for “equity-centered” process includes:
 - Reflective and proactive training
 - A data-informed process that helps campuses examine institutional structures that perpetuate bias.
 - On-going assessment of institutional practices

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Creating Equity-Centered Equivalency Processes

- **Training**
 - DEI Task Force recommends requiring equivalency committees to receive same training as hiring committees.
- **Equivalency Committee Configuration**
 - ASCCC recommends including an HR representative who can inform the equivalency committee of past decisions of the committee for consistency and fairness and provide EEO training to center the committee’s dialogue.
- **Equivalency Process Review**
 - Review/revise equivalency processes to reflect that nontraditional modes of demonstrating equivalent qualifications will be considered.

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Creating Equity-Centered Equivalency Processes

- **Accessibility of Job Application Process**
 - Provide equivalency process information that is clear, easily accessible and up-to-date on the district’s website, and all relevant HR documents.
 - Avoid terms and jargon that may be unfamiliar to candidates from outside the California CCD system.
 - Make clear that candidates will be considered who demonstrate they acquired the requisite general and discipline specific knowledge/skills through nontraditional avenues.

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UPDATE FACULTY JOB ANNOUNCEMENTS

Update Job Announcements

- **Ask:**
 - Do the “KSAs” need to be updated?
 - How do issues of diversity impact this work?
 - What job-related criteria value/attract diverse candidates?
 - What job-related criteria assess “sensitivity to diversity. . .”
 - Who are the students served and what are their needs?
 - Do the preferred criteria include irrational barriers (i.e. unreliable predictors of performance) that will tend to reduce pool diversity?


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Update Job Announcements

For example:

- Valuing currency of knowledge may facilitate building a more diverse, qualified pool
 - Valuing current knowledge gives those more recent to the field the opportunity to shine.
 - Diversity increases among those more recent to the field.

*Note: this does **not** mean valuing *younger* candidates.


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Update Job Announcements

For example:

- Global perspective is consistent with CCD mission
- Ask: Is global perspective evident in how jobs are defined and knowledge/skills required?
 - If not: reexamine curriculum, programs, majors, etc.

* **Note:** this will both improve work culture and may diversify pool of qualified candidates.

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Updating the Job Announcement: Putting it into Practice

**BIOLOGICAL SCIENCES—ANATOMY
AND PHYSIOLOGY**
ASSISTANT PROFESSOR
Division: Natural, Social and Applied Sciences

Last Day to Apply: by 5:00 p.m.

JOB OPPORTUNITY ANNOUNCEMENT

XYZ College is accepting applications for a full time, tenure track Biological Sciences Assistant Professor.

DESCRIPTION OF POSITION	XYZ College is seeking a full-time tenure track academic position in Biological Sciences. The successful candidate will be well qualified to teach a variety of biological science courses. Teaching assignments will include Human Anatomy and Human Physiology, and other Biological Sciences course.
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Rethinking Job Announcements: Putting it into Practice

DUTIES AND RESPONSIBILITIES	<p>Duties and responsibilities include but are not limited to:</p> <ol style="list-style-type: none"> 1. Advancing student learning through dedicated, exemplary instruction in accordance with established course outlines; 2. Developing and implementing student learning outcomes assessment processes for courses and programs. 3. Collaborating in the development and revision of the curriculum and program review; 4. Engaging in department program improvement initiatives. 5. Participating in department, division, and college committees; 6. Participating in professional development activities, both departmental and college-wide; 7. Maintaining current knowledge in the subject matter area and effective teaching/learning strategies; 8. Maintaining appropriate standards of professional conduct and ethics; 9. Informing students of course requirements, evaluation procedures and attendance requirements; 10. Preparing and grading class assignments and examinations and informing students of their academic progress; 11. Maintaining attendance, scholastic, and personnel records and submitting them according to published deadlines; 12. Posting and maintaining adequate and regular office hours in accordance with prevailing policy; 13. Participating in College's shared governance processes.
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Rethinking Job Announcements: Putting it into Practice

MINIMUM QUALIFICATIONS

The applicant must possess one the following qualifications (earned degrees must be from an accredited college/university):

1. Master's degree in any biological science; OR
2. Bachelor's degree in any biologic science AND a Master's degree in biochemistry, biophysics, or marine science; OR
3. The equivalent. Please note: If you do not meet the minimum qualifications EXACTLY or if you're unsure whether or not your degree meets the minimum qualifications, you MUST complete the equivalency form contained in the application packet.

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Rethinking Job Announcements: Putting it into Practice

Desirable Qualifications

1. Demonstrated commitment to student learning and to the success of all students in the open-access learning environment of a community college;
2. Demonstrated sensitivity to issues of diversity, and ability to motivate and teach community college students of diverse ethnic and racial backgrounds, sexual orientations, genders, cultures, and learning styles, as well as students with disabilities or varied levels of academic preparation;
3. Demonstrated commitment to professional growth and development, to innovation and improvement of teaching, and to assuming faculty responsibilities beyond the classroom in a shared governance environment;
4. Demonstrated excellence in preparation and knowledge of and/or teaching experience in Human Anatomy, Human Physiology, and other biological science courses such as General Biology.

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Rethinking Job Announcements: Putting it into Practice

SELECTION PROCEDURE

- Applications will be screened to ensure the applicant meets the minimum qualifications as stated in the job announcement.
- Those candidates who are deemed to possess the highest degree of desirable qualifications will be invited to the college at their own expense.
- During the campus visit, each applicant will be interviewed and may be asked to conduct a demonstration appropriate to the discipline.

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Rethinking Job Announcements: Putting it into Practice

GENERAL INFORMATION

XYZ College
XYZ College is a large suburban community college, approximately 25 miles from Big City. One of 3 colleges in the XYZ Community College District, XYZ College enrolls approximately 20,000 students, about 40% of whom come from groups historically underrepresented in higher education. XYZ College ranks consistently as one of the most successful transfer institutions in California and also offers a wide range of highly respected occupational programs leading to certificates or degrees. The faculty is known for its intellectual vitality and deep commitment to the success of its students.

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