

		<p>11 Irvine Valley College Academic Senate v. Board of Trustees</p> <p>1. Preliminarily, the parties are advised that Hon. Clay M. Smith is a part-time faculty member of the North Orange County Community College District. Judge Smith is not a member of any administrative or academic committee or body in connection with such part-time employment. The Court has no interest in the outcome of this proceeding, its impartiality is not affected, and recusal is not appropriate.</p> <p>2. Petitioner's request for judicial notice is granted. Respondent's request for judicial notice is also granted.</p> <p>3. Petitioners have standing to bring this mandamus proceeding. The Senates are statutorily created bodies and have a clear beneficial interest in the outcome of this proceeding. They are the appropriate - perhaps only - body able to assert the claims they raise here.</p> <p>4. District's argument that Ed. Code § 87360(b) required the District and Senate mutually to develop hiring criteria, policies, and procedures prior to July 1, 1990, but does not require such collaboration thereafter for revisions to such criteria, policies, and procedures is illogical and is rejected. The upshot of such argument, taken to its extreme, would have permitted the District unilaterally to undo the procedures any time after July 1, 1990 (or when they were ultimately adopted in 1994). This is an absurd interpretation of the statute. The appropriate interpretation of § 87360(b) mandates that new or revised criteria, policies, and procedures be jointly developed by the District and the academic senate.</p> <p>5. Petitioners contend that any revisions to the District's hiring procedures absolutely require prior "mutual agreement" between the District and Petitioners. Although the statute does express that such procedures "be developed and agreed upon jointly," a rule of reason must be applied to the statutory language. Petitioners' absolute interpretation would give either party a de facto veto over any changes. Moreover, and as may be the case here, Petitioners could frustrate the District's efforts to bring hiring criteria, policies, and procedures into legal compliance or introduce other appropriate reforms simply</p>
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by declining to participate in the process.

Accordingly, the Court is compelled to read § 87360(b) as requiring that Petitioners have a real and meaningful role - a joint role - in the creation and revision of hiring criteria, policies, and procedures. If they decline to so participate, the District may nevertheless promulgate such revisions in accordance with due process standards. Alternatively, if Petitioners are afforded a real and meaningful role, so that indeed they have had a true opportunity jointly to develop the criteria, policies, and procedures, formal and technical agreement may not be possible and, therefore, cannot be statutorily required. The relevant provisions of the Education Code, taken together, cannot be found to give the Senates a de fact veto or ability to frustrate reform.

6. In this case, it is clear that Petitioners were not afforded an opportunity to jointly develop these revised procedures. Although the process began in February of 2002, Petitioners were not informed until May. Critically, although they were informed in May of the existence and work of the Hiring Policy Task Force and their input was solicited, that is insufficient. Petitioners are entitled to joint-venture status in the process. An opportunity to comment on the work of others is insufficient. Compliance with the statute requires that Petitioners be represented, or at least have an opportunity to be represented, on the Task Force doing the actual development of the policies. By the same token, the Chancellor's laudable, but tardy, efforts to involve Petitioners more fundamentally by creating the District Hiring Procedures Review Committee and extending the time frame for completion of the project, does not meet the statutory mandate of joint participation in development. By that point in time, the real work had been done.

7. In summary, the Court finds that the District violated § 87360(b) in the promulgation of BP 4011.1 and 4011.2. Accordingly, implementation of such policies are hereby stayed to give Petitioners a real and meaningful opportunity to participate in the development of these or substitute hiring criteria, policies, and procedures. In so holding, the Court does not mandate that Petitioners have any specific level of representation on working committees or that no criteria, policy, or procedure may be adopted without Petitioner's agreement. The Court merely holds that such participation - or opportunity for participation - must in substance meet the statutory requirement of joint participation.

8. In light of the Court's holding in paragraph 7 above, and

		<p>the stay of implementation of the Board Policies, the Court need not reach the issues of whether or not BP 4011.1 affords inadequate involvement in faculty hiring and BP 4011.2 violates Petitioners' constitutional rights. Such issues are reserved for later determination, if necessary.</p>
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