



**FOOTHILL  
COLLEGE**

# **Improving Faculty Diversity in California's Public Colleges and Universities**

**An Oversight Hearing  
Assembly Committee on Higher Education  
Assembly Budget Subcommittee No. 2 on  
Education Finance**

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**October 6, 2016**

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# Diversity Benefits Students

Studies prove the educational benefits of a diverse faculty.

Closing achievement gaps by  
19-51%

Fairlie, R. W., Hoffman, F., Oreopoulos, P. (2014). *A Community College Instructor Like Me: Race and Ethnicity Interactions in the Classroom*. American Economic Review



# Key Questions

- Do underrepresented minority students perform better in courses taught by minority instructors?
- Do African-American students do better in courses taught by African-American instructors?
- Do Latino students do better in courses taught by Latino instructors?
- How much does this represent of the achievement gap?



# How Large are Effects Relative to Achievement Gap?

	Similar Instructor Effect	Underrepresented Minority White-Min. Achievement Gap	Percent of Gap	Minority Base Rate
Dropped Course	-0.020	-0.039	51%	0.281
Passed Course	0.012	0.054	23%	0.835
Course Grade	0.054	0.318	19%	2.587
Grade B or Higher	0.024	0.112	21%	0.567

# Conclusions

- Strong, positive and robust minority-interaction effects for all outcomes examined (including long-term outcomes)
- Strong, positive own-race interactions
  - African-Americans seem to have largest gains
- Evidence for students reacting to instructors rather than vice versa
  - Role model effects, take additional courses and majors
  - Focus on courses with more objective grading
- More details, full article
  - <http://people.ucsc.edu/~rfairlie/papers/>

# Institutional Effectiveness

## Diversity's dividend

What's the likelihood that companies in the top quartile for diversity financially outperform those in the bottom quartile?<sup>1</sup>



more likely  
to outperform

**Gender-diverse  
companies**



more likely  
to outperform

**Ethnically diverse  
companies**

<sup>1</sup>Results show likelihood of financial performance above the national industry median. Analysis is based on composite data for all countries in the data set. Results vary by individual country.

Source: McKinsey analysis

# Two Sides of the Same Coin



**Nondiscrimination  
Laws Prohibit  
Discrimination**



**EEO Laws  
Promote  
Inclusion**

# NonDiscrimination Laws & Proposition 209

1996 ballot measure, amended the CA Constitution

“[T]he state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

Cal. Const., art. I, § 31, subd. (a)

# Laws Promoting Inclusion / Equal Employment Opportunities

“a work force that is continually ***responsive to the needs of a diverse student population*** [which] may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by ***eliminating barriers*** to equal employment opportunity.”

# Laws Promoting Inclusion / Equal Employment Opportunities

Establishing and maintaining a **richly diverse workforce** is an on-going process that requires continued **institutionalized effort**.

- “Richly Diverse Workforce”
- “Continued Institutionalized Effort”
- “Establishing and Maintaining”

# Legal Opinion



STATE OF CALIFORNIA

ERIK SKINNER, INTERIM CHANCELLOR

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OFFICE OF GENERAL COUNSEL  
Thuy T. Nguyen, *Interim General Counsel/  
Vice Chancellor*  
Jake Knapp, *Deputy Counsel*  
Peter V. Khang, *Deputy Counsel*

DATE: June 17, 2016

TO: Chief Executive Officers (Chancellor/Presidents and Superintendents/Presidents)  
Presidents of Boards of Trustees  
Community College Attorneys  
Chief Human Resources Officers  
Chief Instructional Officers  
Academic Senate Presidents  
Equal Employment Opportunity & Diversity Committee Chairs  
Other Interested Parties

FROM: Thuy Thi Nguyen   
Interim General Counsel / Vice Chancellor

SUBJECT: **Legal Opinion 16-04: Sixteenth Advisory on Proposition 209 and Equal Employment Opportunity**

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The purpose of this Legal Opinion is to provide legal guidance on developments in Proposition 209 and Equal Employment Opportunity ("EEO") laws since the last Chancellor's Office Legal Opinion on Proposition 209 in 2002. This Opinion also addresses questions raised by faculty, classified professionals, and administrators on faculty diversity during various statewide EEO trainings and webinars that the Office of General Counsel conducted this academic year.

Federal and state employment laws are categorized into two areas: non-discrimination laws and equal employment opportunity (inclusionary) laws – two sides of the same coin. On one side of the coin, the Chancellor's Office, particularly the Office of the General Counsel, monitors non-discrimination laws and handles appeals of student discrimination complaints. On the other side of the coin, the Chancellor's Office also oversees the EEO laws in Title 5 of the California Code of Regulations related to inclusionary hiring practices and has authority to monitor and withhold funds if the Office believes there are patterns of discrimination and non-compliance with certain regulatory provisions.<sup>1</sup>

This Opinion is organized to address issues related to pre-hiring, hiring, and post-hiring processes for all employees:

- I. **FEDERAL AND STATE EEO LAWS**
  - A. Proposition 209 prohibits preference based on race and gender
    1. 20-year case law on Proposition 209
    2. Proposition 209 does not prohibit “diversity,” faculty internship programs, focused outreach, and other EEO efforts
  - B. Federal EEO law
    1. Proposition 209 exception: loss of federal funds
    2. Unconscious bias evidence in federal discrimination lawsuits
  - C. State EEO law
    1. Education Code, Title 5, and Indicators of Institutional Commitment to Diversity
    2. Chancellor’s Office role
  - D. Districts may go beyond federal and state EEO laws
- II. **PRE-HIRING**
  - A. Districts are required to collect longitudinal data, identify any significantly underrepresented group, and conduct adverse impact - 80/20 analysis
    1. Title 5’s 80% rule: Districts are required to identify any “significantly underrepresented groups,” which exist where actual representation is below 80% of projected representation, using numerical data
    2. EEOC’s 4/5<sup>th</sup> rule: Districts are also required to determine whether there is any “adverse impact” based on Equal Employment Opportunity Commission’s (EEOC) 4/5<sup>th</sup> rule of thumb
  - B. Recruitment and other remedies after conducting analysis
  - C. Job announcements
    1. Job descriptions for faculty and administration must identify sensitivity to diversity as a job requirement
    2. Districts should be aware of potential “exclusionary effect” unintentionally produced by the manner in which job descriptions and postings are created
  - D. Screening/Selection committee
    1. Districts may require selection committee to be racial and gender diverse
    2. It is not a violation of law for districts to provide the selection committee with data about the department or data (in aggregate form) about the applicant pool
    3. Screening committees are required to be trained in four specific areas, though the frequency of the training is a local decision
  - E. The Board of Trustees has a role in promoting EEO

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<sup>2</sup> This Opinion will refer to race, color, ethnicity and national origin as “race” for simplicity purposes.

1. Board must ensure that an EEO Officer is designated to implement EEO requirements
2. Board is not required to be trained before hiring of CEO, but it is an indicator of institutional commitment to diversity
3. Board is required to approve an EEO plan every three years, or as frequently as it requires
4. Board has a right to reject the finalists

**III. HIRING**

- A. Role of EEO officer
- B. The diversity question in applications and interviews
- C. Hiring processes

**IV. POST-HIRING**

- A. Retention and promotion
- B. Faculty diversity internship programs
- C. Leadership succession programs

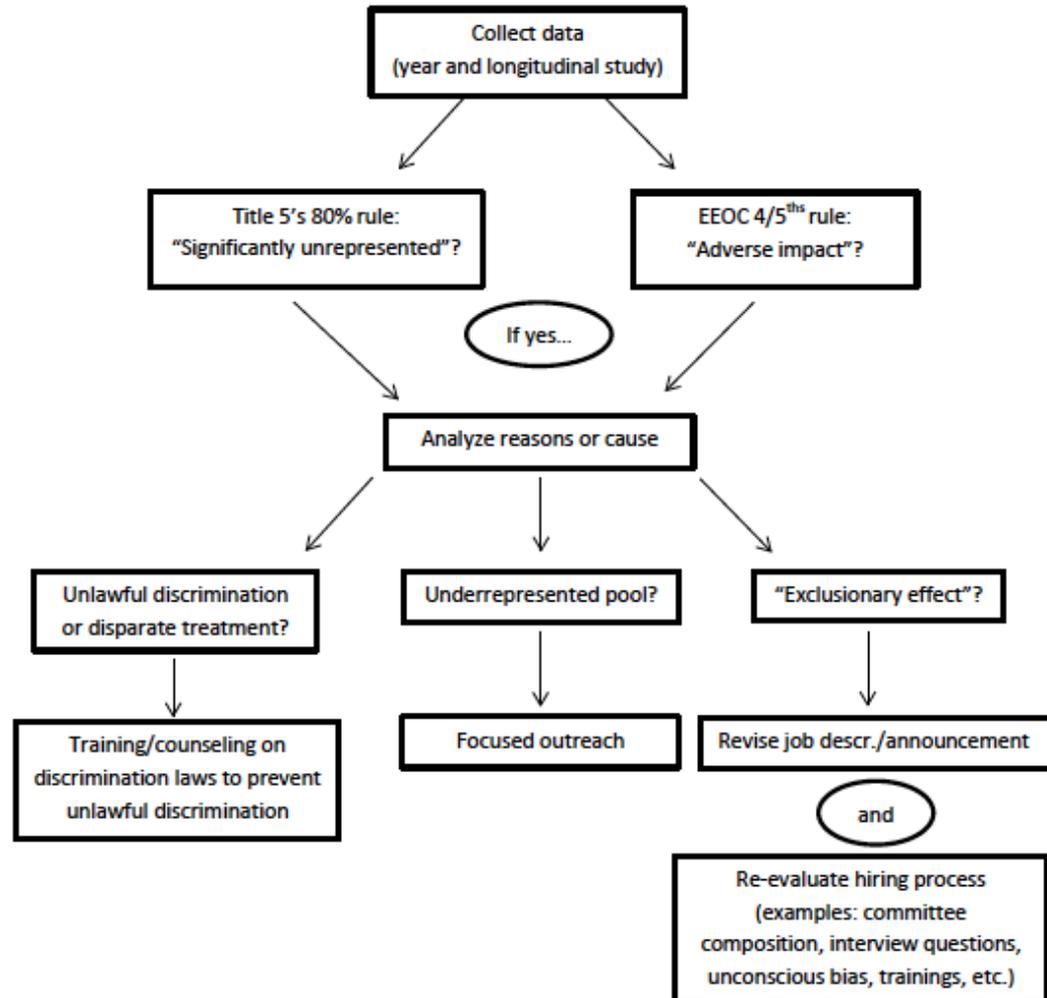
**V. CONCLUSION**

**VI. APPENDICES**

- A. 20-Year Chronology of Proposition 209 case Law
- B. Title 5: EEO Regulations

## V. CONCLUSION

Education Code section 87100 and Title 5 require community colleges to have a richly diverse workforce that addresses the needs of our diverse student population. This legal obligation does not change due to Proposition 209. Instead, it requires focusing on equal employment opportunities to eliminate barriers in employment – barriers such as lack of focused outreach, a non-welcoming culture, and implicit and explicit bias. Such effort to eliminate barriers require a proactive, intentional effort by colleges, and require various institutional discipline such as review of job descriptions to avoid exclusionary effect, analysis of significant underrepresentation and adverse impact to ensure recruitment efforts and hiring processes are not unintentionally discriminatory, and effective training of committee members to self-regulate unconscious bias.



# Search Committee

Screening/selection committee shall be trained on:

- (a) federal and state **law**, including Title 5;
- (b) the **educational** benefits of workforce diversity;
- (c) the elimination of **bias** in hiring decisions; and
- (d) **best practices** in serving on a selection/screening committee.

California Title 5, Section 53003(c)

# A College President's Perspective



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