

"Faculty Diversification at the University of California"

Oversight Hearing,
Assembly Committee on Higher Education
October 23, 2018



Thuy Thi Nguyen



@FoothillPrez

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 the achievement gap?



How Large are Effects Relative to Achievement Gap?

	Underrepresented Minority White-Min.			
	Similar Instructor Effect	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?¹



more likely
to outperform

Gender-diverse
companies



more likely
to outperform

Ethnically diverse
companies

¹Results 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

Non-Discrimination 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)

Two Sides of the Same Coin



**Nondiscrimination
Laws Prohibit
Discrimination**



**EEO Laws
Promote
Inclusion**

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”

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)

Legal Opinion



STATE OF CALIFORNIA

ERIK SKINNER, INTERIM CHANCELLOR

CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE


1102 Q STREET, SUITE 4554
SACRAMENTO, CA 95811-6549
(916) 445-8752
<http://www.cccco.edu>

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

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.¹

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 4/5th rule: Districts are also required to determine whether there is any “adverse impact” based on Equal Employment Opportunity Commission’s (EEOC) 4/5th 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

² 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

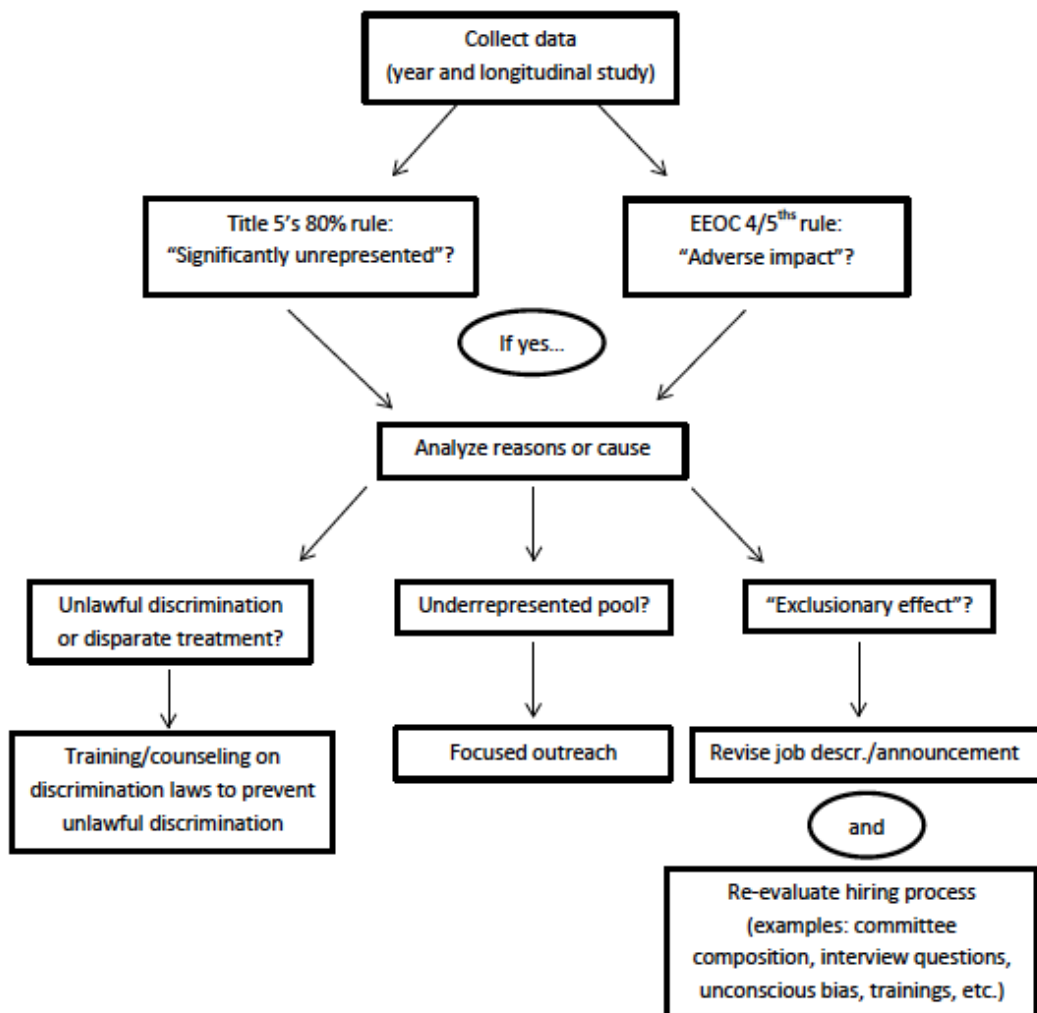
V. CONCLUSION

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.



2+2+3

Community College Pathway to Law School

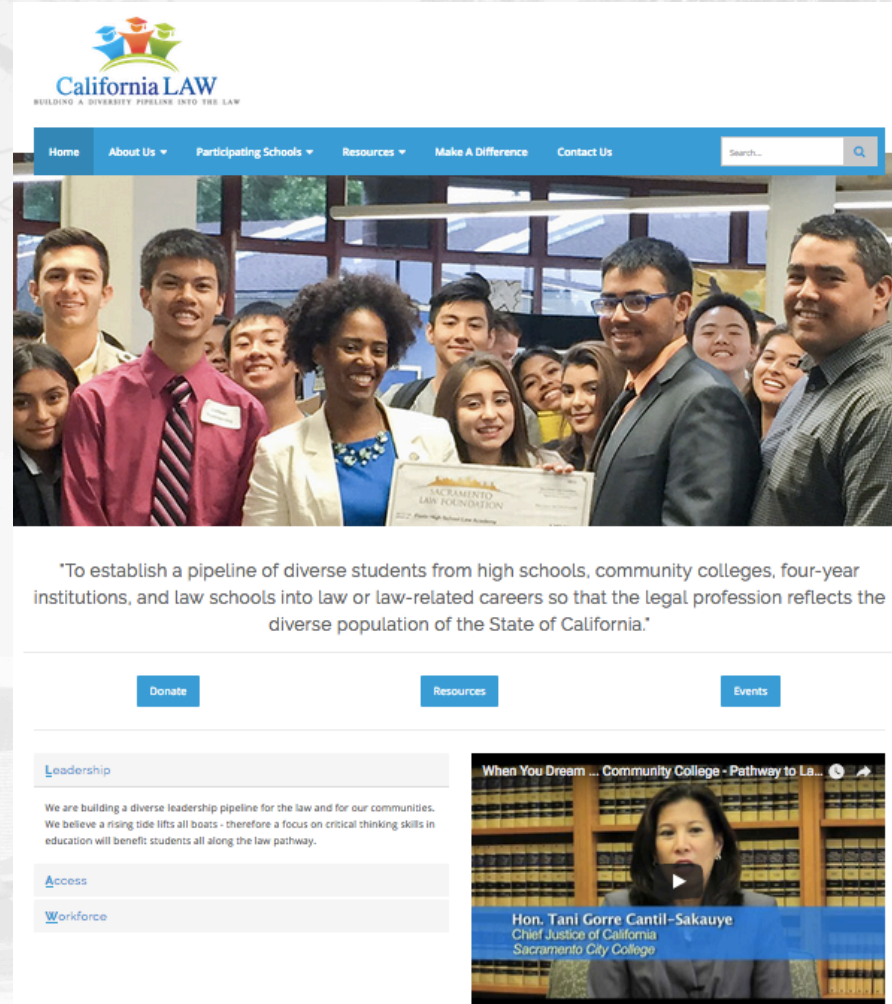
22 H.S. Law Academies

26 Community Colleges

8 Universities

8 Law Schools

- UC Davis
- UC Irvine
- UC Berkeley
- UCLA



The screenshot shows the homepage of the California LAW website. At the top is the logo for California LAW, which includes a stylized graphic of three people in blue, red, and green, with the text "California LAW" and the tagline "BUILDING A DIVERSITY PIPELINE INTO THE LAW". Below the logo is a navigation bar with links: Home, About Us, Participating Schools, Resources, Make A Difference, and Contact Us. There is also a search bar. The main image is a group of diverse students and professionals, some holding a certificate that says "SACRAMENTO LAW FOUNDATION". Below the image is a quote: "To establish a pipeline of diverse students from high schools, community colleges, four-year institutions, and law schools into law or law-related careers so that the legal profession reflects the diverse population of the State of California." Below the quote are three buttons: Donate, Resources, and Events. At the bottom, there are three sections: Leadership, Access, and Workforce. The Leadership section has a paragraph: "We are building a diverse leadership pipeline for the law and for our communities. We believe a rising tide lifts all boats - therefore a focus on critical thinking skills in education will benefit students all along the law pathway." The Access section is empty. The Workforce section is empty. On the right side, there is a video player with the title "When You Dream ... Community College - Pathway to La..." and a play button. Below the video player is a caption: "Hon. Tani Gorre Cantil-Sakauye, Chief Justice of California, Sacramento City College".