

Board of Trustees Agenda Item

Board Meeting Date: January 5, 2010

Title of Item: Declaration of Discrepancy concerning Attendance Accounting Related issues in the Foothill College Physical Education Division

Background and Analysis:

At the November 2, 2009, meeting of the Board of Trustees the Board took action to accept an Agreed Upon Procedures (AUP) report prepared by Perry-Smith LLP, dated October 13, 2009, concerning attendance accounting and enrollment issues within the Foothill College Physical Education Division. That agenda item included both the AUP report and a staff memo outlining in greater detail the circumstances, impacts and resolution surrounding this matter.

Following Board action to accept the AUP report it, along with the staff memo, was transmitted to the State Chancellor's office. We were subsequently notified that additional information was being sought and once that information had been assembled we were asked to again present the matter to our Board.

These changes reflected in the attached letter, although not altering substantively the previous submission, focus largely on the following:

- Break out, by fiscal year, the FTES decertified for the three year period in question.
- Re-frame the staff memorandum into a letter addressed to Fred Harris and clearly identify it as a "Declaration of Discrepancy" under T-5 Section 59116.
- Expand on the procedures under which Facility Use Agreements are implemented and note how we will draw a distinction between student tuition and rental revenues.

Attached to this item are the following materials:

- Letter to Fred Harris, CCCO, dated December 17, 2009
- AUP report, by Perry-Smith LLP dated October 13, 2009

Recommendation:

District Administration recommends the Board approve by ratification the attached Declaration of Discrepancy.

Submitted by:	Andy Dunn, Vice Chancellor, ext. 6201
Additional contact names:	
Is backup provided?	Yes

**FOOTHILL-DE ANZA
Community College District**

December 17, 2009

Mr. Frederick E. Harris
Assistant Vice Chancellor
Chancellor's Office, California Community Colleges
1102 Q Street
Sacramento, CA 95814-6511

Dear Mr. Harris:

Re: **DECLARATION OF DISCREPANCY (T-5 Section 59116)**
 Foothill College Physical Education Enrollment issues

Background:

On August 4, 2009, we received a call from you alerting us to two areas of concern in the Physical Education Division (PHED) at Foothill College. These concerns emanated from an anonymous complaint received by the State. We were asked to engage our external auditor to review a three year history (fiscal years 2006-07 through 2008-09) of enrollment patterns, allow the state to review and approve the formal engagement letter with the audit team, report the audit findings to the state and present the audit report for acceptance to our Board of Trustees. Ultimately, as the request from the state grew from a limited sample in an audit to our own internal full accounting of these programs, in due course the set of Agreed-Upon-Procedures, approved by the State for the external auditor, was geared toward validating the work of staff.

The set of Agreed-upon-Procedures was completed in October and was presented, along with a staff report, for approval by the Board of Trustees at their meeting of November 2, 2009. Also on November 2, 2009, the District recertified its annual 320 enrollment report and filed a 317 back-up report as a result of the findings in the Agreed-Upon-Procedures. These documents were subsequently transmitted to your office.

On November 12, 2009, we received an e-mail from your office outlining several areas in our reporting where additional information was required. On November 17, 2009, a conference call was held with you and members of your staff, our external auditor and several administrators from our district in order ensure to we had a clear understanding

of the requirements your office needed in order to conclude this matter. This Declaration of Discrepancy, drafted under the auspices of Title 5 Section 59116, is designed to address the request for additional information from your office as outlined above.

Industrial Volleyball league:

The first area of concern dealt with the Industrial Volleyball League (IVL). The IVL frequently enrolled some or all its membership in volleyball courses at Foothill College and the basis of this particular issue centered on whether these courses were in fact open to the general public and therefore eligible to receive state apportionment funding.

The IVL investigation and validation focused on whether there was any limitation of access in the enrollment process that may have to limit enrollment to only Industrial Volleyball members, whether we can demonstrate enrollment of non-league members in these volleyball courses, whether non-league members automatically directed to other courses, whether there was any advance knowledge or enrollment access provided to Industrial Volleyball members and whether facility rental fees were being applied to cover student enrollment fees and if so, how were the fees credited and did the credit cover only the Industrial Volleyball participants or the all class participants.

Upon our examination of the IVL courses, we determined that the classes did meet the curriculum guidelines, but fell short of meeting the open access guidelines. Consequently we removed all those classes from the 08-09 year, as will be reflected in the Apportionment recertification, and we calculated the FTES from the 07-08 and 06-07 year that will need to be removed. The Auditors did verify our calculations for this FTES as part of their scope of work.

With regard to the collection of fees, we did discover that the IVL League transmitted a payment each quarter for the registration fees for the students enrolled in these courses. These registration fees were transmitted to Admissions and Records and were properly recorded as revenue to the State. It is not uncommon for a third party to pay registration fees for students, as many employers do this for their employees. We traced all the enrollment fees collected and paid by the Industrial Volleyball League, and these were submitted to the PE Division Office, which in turn submitted them to the Admissions and Records office for proper deposit into the student enrollment fee revenue account. The auditors confirmed these deposits. There was no indication of fraudulent activity or personal gain in any of these financial transactions related to the IVL payments. We believe that the IVL classes were well intentioned as these classes were part of our approved curriculum, taught by our full time or part time instructors

with regular load factors, and grades were recorded for all students. We believe that these classes were in fact open to the entire community at their inception but somehow over the years, the enrollment became exclusively IVL members. We stopped offering the volleyball classes in Fall 2009. The violation for this class is that it was not open to anyone in the community so we had to back out that apportionment. The district has reviewed its required attendance accounting procedures pursuant to Title 5 Section 58030 and has made necessary modifications to assure that these problems do not re-occur. We have trained the division deans, curriculum specialists, vice presidents at both colleges regarding the inappropriateness of a closed class. It should be emphasized that we normally offer 14,000 sections of classes each year and this is the only exception we found to the open access class offerings. Since this class was one of our classes in our facilities, there was no facilities agreement appropriate for this class. The IVL did pay for the enrollment fees as other third party providers do for other enrollments. The funds that were transmitted for the IVL enrollment fees did flow through the facilities account at the PE division, but those funds were credited to enrollment revenue as noted above. Part of the change in internal procedures is that revenue paid by a third party will flow directly to Admissions and Records and not through a facilities account, although as mentioned above it is a moot point for the IVL since there are no longer any classes associated with this league.

Although there are other clubs, such as the Karate Club, which frequently use our facilities, these uses are formalized under a Facility Use Agreement. The procedures regarding the use of our facilities by private, non-profit and for-profit entities includes the appropriate fee schedule and addresses other requirements including processing fee, certificate of insurance, parking fees and contract and payment terms. This process is further codified in Board Policy 3205, "Community Use of District Facilities." Clubs like karate, are simply utilizing our facilities, there are no classes wrapped around any club activities. The district has comprehensive procedures and forms on file for any organization using our facilities, all certificates of insurance are obtained, and appropriate fees are levied in accordance with statute. Looking ahead, all facilities rentals will be formalized under such rental agreements and we will not be making payment for student tuition from any district fund thus creating a clear distinction between rental revenues and student fees.

Intercollegiate Athletics:

The second issue was focused on Foothill College Physical Education attendance accounting for inter-collegiate sports. This concern was two-fold; first, whether we exceeded the California Code of Regulations Title-5 limit (58162) of 175 hours of attendance for each enrolled student in each fiscal year for each sport in which the

student participates and; second, whether conditioning courses associated with these team sports were open and available for enrollment by the public.

Research indicated that there were a limited number of instances of this Title-5 requirement being exceeded primarily in those sports such as basketball that spanned academic terms. The classes that spanned quarters included a new class for the next quarter so that the instructor would have a way to get paid for that class. We have now instituted an alternate method for the instructor to get paid, so that is not confused with the apportionment calculations for the class.

The second issue raised with Foothill PE, was the use of conditioning classes for the athletes. Once again, these were approved classes taught by credentialed instructors with proper attendance accounting procedures in place in all sections. However, they were not technically open to all students since they were tied specifically to each team sport. As a result of this examination, we have backed out all of the FTES for the last 3 years just to be on the safe side. For the 09-10 year, we have eliminated all of these conditioning classes which were tied to specific sports, and instead will have the athletes enroll in one of the many other conditioning classes we offer which are in fact open to all students. We believe this will be in full compliance with Title 5.

Review of De Anza College:

Although the accompanying audit report was structured to precisely address the Foothill College PHED enrollment concerns raised by the State Chancellors office, we voluntarily extended our investigation to De Anza College to examine their attendance accounting practices within the Physical Education division. De Anza had a minor problem with some of the athletic teams calculating at 180 hours instead of the maximum 175 hours as outlined in Title 5. Therefore, De Anza recertified the apportionment for 2008-09 and will reduce their apportionment by approximately 50 FTES.

Fiscal Impact:

The impacted FTES are displayed in the Audit Report as prepared by Perry-Smith LLP , dated October 13, 2009 (attached) and total 527.34 credit FTES. This figure includes 246.05 FTES in FY 2006-07, 281.21 FTES in FY 2007-08 and 0.08 FTES in FY 2008-09.

The associated projected fiscal impact over the three fiscal years has involved a great deal of discussion with the State Chancellors office as issues of Growth, Restoration and Stability have been examined. For fiscal year 2006-07 FHDA was in "Stability Funding" meaning enrollment had declined from the prior year taking us below our funded base and under the SB 361 funding model a district is held-harmless during the first year of

enrollment decline. Thus the impact of removing FTES from the 2006-07 fiscal year was to simply expand the scope of Stability funding. In 2007-08 FHDA recovered and grew beyond base, so there will be a loss of revenue attributed to that year of approximately \$300 thousand. For the 08-09 year, the apportionment process is such that although districts file an annual enrollment report in July, an opportunity for districts to re-certify their annual enrollments is open through November 1 following the end of each fiscal year. We had a significant amount of unfunded FTES reported in the 2008-09 year so it does not appear we will see a negative fiscal impact for the 08-09 year. We are awaiting final calculations on these apportionments from Ed Monroe, but the estimated fiscal impact has been communicated to the budget committee and to the Board of Trustees as part of the 1st quarter report.

Conclusion:

Neither the analysis by staff nor the work of our external auditor found any indication of personal gain, criminal wrong-doing or other malfeasance by any district/college officials, including coaches and instructors.

Both colleges are increasing training and making curricular changes to ensure compliance with key Title-5 provisions. Specifically at Foothill College, all classes in any division will have to meet the rigorous test of open enrollment so as not to restrict these classes to a specific group of students. To that end, the conditioning classes for intercollegiate athletics have been eliminated from the curriculum. As a strategy for assuring compliance with related Title 5 regulations in the future, Foothill's Vice President of Educational Resources is meeting twice a month with instructional deans. The agenda includes topics such as recent Title 5 changes, case studies that test and develop operational knowledge, review of processes for quality assurance, and opportunities for group problem-solving. Lastly, for both Foothill and De Anza College, curriculum changes have been made to ensure that the 175 hour maximum for athletes in inter-collegiate sports programs is not exceeded. The responsibility of continuing training is always a challenge particularly with staff turnover compounded by the practice of interim appointments in many administrative positions. We are committed to the necessary training to understand the complexities of Title 5 regulations in order to prevent this type of misunderstanding of regulations from occurring again.

This Declaration of Discrepancy will be presented to the Board of Trustees in Public Session at their meeting of January 5, 2010.

Attached for reference is the report of our Independent Auditor, Perry-Smith LLP, dated October 13, 2009.

Mr. Frederick E. Harris
Declaration of Discrepancy
December 17, 2009
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Sincerely,

W. Andrew Dunn, Vice Chancellor,
Business Services

Attachments

Perry-Smith AUP Report
FHDA Board of Trustees Agenda item

C: Mike Brandy, Interim Chancellor
 Judy Miner, President, Foothill College
 Hector Quinonez, Controller

**INDEPENDENT ACCOUNTANT'S REPORT
ON APPLYING AGREED-UPON PROCEDURES**

Board of Trustees
Foothill-De Anza Community College District
Los Altos Hill, California

We have performed the procedures enumerated in Attachment I, which were agreed to by Foothill-De Anza Community College District (the "District"), solely to assist the District related to procedures requested by the California Community Colleges Chancellor's Office concerning the Industrial Volleyball League and the attendance hours for student athletes. This agreed-upon procedures engagement was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the District. Consequently, we make no representation regarding the sufficiency of the procedures described in Attachment I either for the purpose for which this report has been requested or for any other purpose.

The procedures performed and conclusions reached as a result of these procedures are identified in Attachment I.

We were not engaged to, and did not, perform an examination of the attendance hours for student athletes reported by the District for apportionment purposes for each quarter from Fall 2006 through Spring 2009, the objective of which would be the expression of an opinion on Full Time Equivalent Student (FTES) totals reported by the District. Accordingly, we do not express such an opinion. Had we performed other procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of Foothill-De Anza Community College District and the California Community Colleges Chancellor's Office and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

Perry-Smith LLP

October 13, 2009

**FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
PROCEDURES PERFORMED AND CONCLUSIONS**

PROCEDURES PERFORMED

1. Inquire of the Foothill College Registrar the following:
 - a. Enrollment procedures related to physical education courses.
 - b. Process for admission of students other than through the Registrar's office, if any.
 - c. If Industrial Volleyball League (IVL) participants were given preferential registration.
2. Select a haphazard sample of 20% of volleyball and athletic conditioning classes identified by the District as disallowed for purposes of claiming apportionment for each quarter from Fall 2006 through Spring 2009 and perform the following:
 - a. Agree total enrollment identified to supporting class rosters.
 - b. Agree weekly contact hours factor to supporting documentation.
 - c. Recalculate the Weekly Student Contact Hours (WSCH) and Full Time Equivalent Student (FTES) totals determined by the District.
3. Recalculate District prepared spreadsheets for each quarter from Fall 2006 through spring 2009. Determine the FTES totals identified by the District are mathematically accurate.
4. Select a haphazard sample of 20 students in the volleyball course sections identified as disallowed for claiming apportionment by the District and perform the following:
 - a. Determine if the student paid an enrollment fee.
 - b. If the student did not pay an enrollment fee, determine the system reason/waiver status regarding why an enrollment fee was not assessed.
5. Determine if the District had any rental agreements with the IVL for use of facilities and perform the following:
 - a. Determine the District recorded the rental income in local revenue codes for rental fees received.
 - b. Determine if rental fees received were paid by the participant in lieu of course enrollment fees.

CONCLUSIONS

1. We completed inquiries with the Foothill College Registrar, and determined all students are required to apply for admission to Foothill College through the Registrar's Office. Once accepted into the College, students can enroll in classes via phone, online, mail or in person. The Registrar was not aware of any other authorized processes for admitting students to the College other than through applications filed with the Registrar's Office. The Registrar represented that priority registration was given to students affiliated with the IVL; IVL students typically applied for admission to the College through paper application; applications from IVL affiliated students are processed in the same manner as other student at Foothill College.

**FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
PROCEDURES PERFORMED AND CONCLUSIONS
(Continued)**

CONCLUSIONS (Continued)

2. We obtained the population of classes identified by the District as disallowed for purposes of claiming apportionment for each quarter from Fall 2006 through Spring 2009 and agreed the total enrollment identified to supporting class rosters. Further, we agreed the weekly contact hours factor to supporting documentation in the District's SIS System, and recalculated WSCH and FTES.

In performing these procedures we determined the District used a rounded factor for the number of course weeks (TLM), of 12. However exact TLM factor should have been 11.67. This difference in TLM factor resulted in a variance of 2.01 FTES from the District identified FTES for disallowed courses.

Through the performance of our procedures we identified the following total differences from the total FTES identified by the District:

Term	District FTES	PSLLP FTES	Difference
Summer 2006	64.27	64.20	(0.07)
Fall 2006	77.43	77.38	(0.05)
Winter 2007	59.05	57.81	(1.24)
Spring 2007	47.05	46.66	(0.39)
Summer 2007	54.60	54.82	0.22
Fall 2007	83.53	83.20	(0.33)
Winter 2008	73.75	73.59	(0.16)
Spring 2008	69.59	69.60	0.01
Summer 2008	0.00	0.00	0.00
Fall 2008	0.08	0.08	0.00
Winter 2009	0.00	0.00	0.00
Spring 2009	0.00	0.00	0.00
Total	529.35	527.34	(2.01)

3. We obtained the District prepared spreadsheets for each quarter from Fall 2006 through Spring 2009 and determined the FTES totals identified by the District to be mathematically accurate.
4. We selected a haphazard sample of 20 students from the volleyball classes identified by the District and found the following:
- One student paid the course enrollment fee.
 - One student received financial aid assistance and therefore had a fee waiver on file.
 - 18 students were IVL participants. IVL participants' enrollment fees were paid by the Foothill College Physical Education Department.

**FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
PROCEDURES PERFORMED AND CONCLUSIONS
(Continued)**

CONCLUSIONS (Continued)

5. We completed inquiries of the Foothill College Physical Education Department and determined no rental agreement exists between the College and IVL. Fees paid to the College by IVL are collected by the Physical Education Department and are recorded in Fund 15, Account 151911 (Rental Income). We sampled three months from Fall 2006 to Spring 2009 and determined revenue was collected from IVL and recorded in rental income. IVL students pay the IVL a participation fee which covers costs to participate in the volleyball course at Foothill. IVL then forwards those fees to the Foothill College Physical Education Department.

Further, Foothill College's Registrar's Office invoices the Physical Education Department for the number of participants in the volleyball courses. The Physical Education Department pays the invoice through the District's Accounts Payable system. When fees are collected by the Registrar's Office those fees are recorded as enrollment fees in the District's general ledger.