

President's Report

The Budget and the Bond

by Tim Shively, FA President

While the two have nothing *directly* to do with each other, the District's just approved 2017-18 budget and proposed general obligation bond establish a rhetorical double helix likely to dominate much of the District's discourse over the next year and beyond. As one thread winds relative to District revenue, expenditures, and investments, so the development of a survey instrument, polling, and balloting, if not an exact mirror, tends to curve in relation to the other. Consider Chancellor Miner's recent missive, sent to all district employees, in which she outlines both "Budget reduction targets" and "Polling for a possible bond." While both of these items featured prominently in the August 28 Board of Trustees meeting, singling them out effectively "pairs" them, intentionally or not, for initial public discussion.

In point of fact, both the budget and the bond have figured largely in the past three Board meetings, with the budget (including the current \$2 million in reductions Chancellor Miner highlights) formally approved at the September 11 Board meeting, at which the Board also ratified a contract with "FM3," a polling organization, to develop a survey instrument which would assess the likelihood of voters passing a bond. But there are important details and essential context needed to follow how these dual agendas may unfurl from this point forward.

Reminder on September Pay

For many full-time faculty, their September paycheck will be substantially less than other checks. Those who did not have an assignment in the summer session will have *three* (not one) months of benefit premiums deducted: for July, August, and September. Part-time faculty will also receive a less-than usual check amount: they do not receive a paycheck in September, but rather a small "advance" in early October for work done in September.

The Budget. To anyone considering the enrollment picture at our colleges over the past several years, it is not the cheeriest prospect. We are currently facing our seventh consecutive year of declining enrollment in the District, and while, according to Vice Chancellor of Finance Kevin McElroy, we will not have our apportionment cut by the state this year due to Stabilization Funding, we'll get "hit" next year if the enrollment decline continues. And according to the latest enrollment figures as of press time, we're headed in that direction. Although Foothill numbers are currently "up" 1.1 percent from the same time period last year, De Anza is down 4 percent (which, given that Foothill percentage is predicated on a smaller student body, means that as a district, we're still down more than 3 percent).

While the numbers presented in the district budget picture (<http://business.fhda.edu/budget/annual-budget-and-quarterly-report.html>, as linked in Miner's letter) certainly add up, and are accompanied by a host of illuminating charts and graphs (the glossary at the end is particularly helpful for those of us actuarially challenged folks), there is also the question of perspective. While the future may not look rosy, our current ending balance (approximately \$50 million) is among the three highest for state community college districts, largely due to our "Stability Fund" (currently at \$25 million). District figures show how this fund will annually decrease over the next several years if the current trajectory of addressing the structural deficit continues, but despite Chancellor Miner's assurances that reduction targets "will be reviewed quarterly," it is ultimately the Board's decision to address this structural deficit now and at the levels stipulated with the proposed \$2, \$3 and \$5 million dollar reductions over

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Negotiations Update

by Kathy Perino, FA Chief Negotiator

In addition to on-going negotiations of the *Agreement*, FA leadership is currently involved in the shared governance process to draft language for a new Administrative Procedure on Child Abuse reporting and a revised Administrative Procedure for Sexual Misconduct including Sex-based Violence, Harassment, and Discrimination. The latter has been in the works for over two years, while the former was introduced last spring.

Sex-based Violence, Harassment, and Discrimination

Currently, FHDA has one policy and one procedure for handling all types of Harassment and Discrimination, BP 4640 and AP 4640. A student, an employee, or a community member who feels he/she has been harassed or discriminated against can file a complaint against anyone associated with the District, and the procedure outlines how the complaint is handled, clarifies when an investigation into the complaint occurs, and states the rights of both the complainant and the respondent, the person whom the complaint is filed against.

FHDA has had the same board policy and administrative procedures for many years, but some events and complaints from the last few years emphasized the need to rewrite the procedure and develop a separate procedure for sex-based violence, harassment, and discrimination. This new procedure will likely be over 20 pages in length and what follows is a synopsis of why it is required.

First, news stories of universities, colleges, and now high schools improperly handling complaints of sexual misconduct on campus are a weekly occurrence. Administrators have a heightened awareness of Title IX requirements, and the federal agencies, namely the Office of Civil Rights (OCR), have become active in mandating that procedures are in place to protect anyone who has been a victim of sexual misconduct on campus.

Second, in 2014 a student at Foothill College filed a complaint alleging sexual harassment against a faculty member. The district, after following the appropriate procedures and investigating the complaint, informed the student the evidence did not rise to the level of harassment or discrimination. The student then filed a separate complaint with the Office of OCR, which conducted its own investigation, and in doing so, reviewed AP 4640, the FHDA procedures for handling complaints. OCR came to the same conclusion, that the evidence in the case did not rise to the level of harassment or discrimination, but, it also concluded that AP 4640 did not provide adequate protection for the complainant.

In April 2015, Vice Chancellor of Human Resources, Dorene Novotny, and then President of Foothill College, Judy Miner, signed a "Resolution Agreement" with the OCR, without informing FA or other unions, and this agreement outlined the changes the District would make to the administrative procedures.

Much to FA's dismay, this Resolution Agreement includes changes to AP 4640 that diminish the due process rights of the respondent, who, based on past cases, is a faculty member at least 50 percent of the time. In that FA already views the rights of respondents in the AP 4640 as minimal, reducing them is not something FA will allow. FA has long been concerned that complaints clearly not related to harassment or discrimination are investigated under AP 4640, but that's another story for another article.

At the same time as the OCR investigation and subsequent agreement with the District regarding AP 4640, FA was waiting for a Public Employee Relations Board (PERB) decision regarding the union's right to request and review a complaint against any faculty member, because a union has the duty to represent all members.

In fact, FA has spent years fighting the District for the right to see complaints filed against faculty, those filed under AP 4640 and those the District refers to as "informal" complaints, in order to be able to represent faculty in such situations.

The District held that FA did not have a right to see key information in a complaint, and the legal arguments ensued. FA and the District argued the case before PERB in 2011 and waited over four years for the decision, which was finally issued on June 22, 2015. It concluded that it was indeed a clear violation of the Educational Employment Relations Act (EERA) for the District to refuse to provide the Union with copies of complaints prior to an investigatory interview.

Just a few weeks prior to this decision by the Public Employee Rights Bureau, the Resolution Agreement between OCR and the District was signed and within it our District agreed to change AP 4640 so that in some cases it could withhold formal complaints from the respondent. Only after the PERB decision was issued did the District inform



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FA of its agreement with OCR. Since then, the District has been communicating with OCR regarding progress on the changes to procedures, which FA demanded to negotiate, and FA has been consulting with its attorneys; our goal is to draft new language that protects both the complainant and the respondent.

While the majority of complaints filed are students filing against faculty, the policy and procedures must be written to address student-student complaints, employee-employee complaints, and any complaint involving a community member.

In addition to protecting the rights of both the complainant and the respondent, FA has drafted language to clarify which employees are "responsible employees" for reporting purposes. "Responsible employees" have a duty to report any knowledge of violence, harassment, or discrimination to the campus Title IX coordinator, and if a responsible employee doesn't file a report, then some consequence, including disciplinary action, could occur.

This policy, which potentially could produce stress and confusion, if not conflict, must be carefully crafted. One can imagine a situation in which a faculty member learns about a student's situation and reacts by immediately filing a report, even though referring the student to support services would also be appropriate and more supportive, based on knowledge of the student's specific circumstances and the faculty member's efforts to maintain the student's trust.

In particular, FA must work with the District to clarify exactly who is required to report knowledge of violence, harassment, or discrimination. The employees that FA has proposed as "responsible employees" include the Title IX coordinators and staff, all campus safety employees, all college and district administrators and associated administrative assistants, academic counselors and counseling staff, all athletic coaches and staff, faculty members or staff when they are leading an off-campus event or trip, and faculty or staff advisors to student clubs when the matter involves a club member or club activity participant.

Negotiations on all matters related to the Sexual Misconduct policy will continue this fall and perhaps beyond. The last draft that FA provided to the District met all requirements of the OCR resolution agreement, with the exception of those that violate the PERB ruling.

Child Abuse Reporting

The new Administrative Procedure introduced at the Chancellor's Advisory Council (CAC) last Spring is AP 3518: Child Abuse Reporting. As part of the negotiations for the revision of AP 4640, the issue of mandated reporters of child abuse arose. While K-12 educators are very familiar with mandated reporter laws, many community college faculty and staff are unclear on the legal requirements.

Similar to the issues involved in the sexual misconduct policy, FA is interested in clarifying the meaning of the Penal Code language for a "mandatory reporter." The Penal Code states that a mandatory reporter of child abuse is an employee or administrator of a public or private postsecondary institution, whose duties bring the administrator or employee into contact with children on a regular basis.

Another subsection of the code states that any athletic coach, including an assistant coach, at a public or private post-secondary institution is a mandatory reporter. Therefore, faculty who regularly interact with minors are mandated reporters of suspected child abuse.

Unfortunately, the Penal Code does not provide much clarification for the phrase "regularly interact with minors." It is probably safe to say that faculty working in the child development programs are mandatory reporters, and District plumbers or electricians are not. For faculty who have one or two minor students in one class each year, the legal definition is not so clear, so FA believes it is likely best to err on the side of caution and report any suspected child abuse.

Of note is that the requirement to report suspected child abuse assumes the faculty member is aware a student is a minor. Many faculty have no idea which students are minors and which are not. Apparently, this "problem" will soon be resolved: District ETS staff have been working to make faculty aware of minors, likely by an indicator next to the name on the course roster.

AP 3518 - Child Abuse Reporting is in the early draft stages. FA will work to ensure that the language defining mandatory reporters is in line with the Penal Code definitions, and that the District provides options for training so that faculty are clear on the requirements and process for reporting.

Stay tuned for updates on all of these policies and FA's views of them in future issues of FA News.

Budget and the Bond . . .

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the next three successive years (destinations to be determined). And historically speaking, despite routinely dire predictions about our financial predicament, the district has more often than not ended the budget year with a surplus rather than a deficit. In fact, as recently retired FA President Rich Hansen has pointed out on more than one occasion, the district didn't even have a stability fund beyond the state's mandated 5 percent reserves until the recent recession, and the employee bargaining units helped create this fund.

The Bond. Unfortunately, not even James Bond could deliver us from the supervillain of enrollment decline, and neither can the proposed General Obligation Bond, despite the cheery prospect of taxpayer revenue pouring into the district. One of the fundamental stipulations of such bonds is that the funds can't be used for general revenue expenditures such as salaries, maintenance and supplies. And as Chancellor Miner notes, this bond would not even be applied to new construction, but repairs, renovations and upgrades. Pending polling of district voters, the board has yet to formally approve either the exact amount for which they would request a bond or specific expenditures. However, the presentation at the August 28 Board study session allocated a total of more than \$1.1 billion for intended areas, with \$392 million slated for De Anza, \$332.6 million for Foothill, \$68.7 million for the Sunnyvale campus, \$16.1 million for District wide needs, and the remaining \$318.7 million for Educational Technology Services (a rather hefty proportion, though several key uses

were identified, including \$100 million for "Classroom Technology Enhancement").

Lord knows we could use the money, but there's also the cost to the district of going out for a bond to consider. In its award of a consulting contract to Lee Edwards Group, the district is already in for \$45,000 (exclusive of polling and mailing costs) for a June ballot, a figure which would rise to \$75,500 if we need to "extend" our planning until the November election (we also, however, have the option of cancelling our contract at any point, subject to a monthly pro-rating). Depending on the breadth and depth of the polling and mailings the board approves, it will run us an additional \$31-45,000 and \$30-50,000 respectively. As the saying goes, you need to spend money to make money, and in the larger scheme of things, this is not a huge investment, considering the potential return. We need to make sure that the polling pans out so we avoid a defeat such as we experienced with the Measure E parcel tax in 2010 (an election during which all Santa Clara County parcel tax measures failed and only 2 of 18 statewide passed). Bonds, fortunately, require a lower vote threshold (55 compared to 65 percent for parcel taxes), and by most accounts, the currently robust state and local economy has created a good "climate" for passage of a bond.

The Twining. So while the budget and the bond are not directly linked, we can perceive how they share the common axis of the district's financial health (i.e. the district must have the financial wherewithal to afford renovations and upgrades which, arguably, would make the campus more attractive to students, thereby potentially increasing our enrollment and, ultimately, state funding). One potential obstacle to both helices is the paradox that we are relying upon district voters to approve a bond measure for colleges whose services the vast majority tend not to use. At any rate, the lion's share of current De Anza and Foothill students reside outside of the district. The exact numbers are a bit sketchy since the district boundaries contain only portions of both Saratoga and San Jose, but excluding those cities (it is a small sliver of San Jose), only 29 percent of Foothill students and 26 percent of De Anza students are "in district." Perhaps now is the time to double down on outreach to district communities, which would also have the potential benefit of raising our enrollment.

It's also notable that, as Chancellor Miner notes, the needs which the bond would address are "identified in our facilities, technology and educational master plans." Yet neither Flint Center nor the Griffin House (what one wag of a colleague refers to as the "twin

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Know Your Contract

Mark Your Calendar Now: 2017-18 Important Deadlines

by Steve Howland, FA News Editor

Following is a list of many, but not all, important contractual deadlines for the 2017-18 academic year. If any of these deadlines apply to you, be sure to mark your calendar and read the *Agreement* text referenced in parentheses (fahda.org).

The campus conciliator can assist you: at De Anza, Harman Dhaliwal (DhaliwalHarman@fhda.edu, 408.864.8222) or at Foothill, Karen Erickson (EricksonKaren@fhda.edu, 650.949.8704). Questions can also be directed to the FA Office Manager Susanne Elwell (ElwellSusanne@fhda.edu, 650.949.7544).

Please note: if you miss a contractual deadline, even by a single day, you may lose significant benefits or have to wait a full year before becoming eligible again. This calendar is on the FA website under "FA Current Events."

2017

Sept. 11-Oct. 6: CalPERS Open Enrollment period for all faculty and retirees to enroll/make changes in medical benefit coverage and/or pre-tax dollar Flexible Benefits Spending Account Plan, such as child care spending accounts (22, 22A, 23); coverage is for calendar year, Jan. through Dec. 2018.

Oct. 16: Full-time faculty submit Professional Development Leave (PDL) application to District Office of Human Resources; review with division dean at least five school days prior to submittal. (17.9, 17.11).

Oct. 21: Professional Development Leave Report (Appendix P3) due for faculty on leave the full 2016-17 academic year or completing the final quarter of leave Spring Quarter 2017 (17.16).

Dec. 8: Part-time faculty file intention to change salary column starting in the Winter 2018 Quarter with campus Personnel Office (Appendix B.1, C, E, G).

Dec. 15: Full-time faculty submit Early Retirement Incentive Notice to District Human Resources Office (20.4).

2018

Jan. 5: Part-time faculty submit completion of requirements documentation for column change starting Winter quarter to campus Personnel Office (Appendix B.1, C, E, G).

Jan. 15: *Article 18* faculty meet with the appropriate administrator to determine their reduced contract schedule (18.8.1, Appendix W).

Feb. 5: Professional Development Leave

Committee makes recommendations to the Board at its meeting in February (17.12.3).

Mar. 1: Full-time faculty submit written request for *Article 18* pre-retirement reduction in contract to college president (18.8.2, Appendix W). See 18.9 to request percentage change in subsequent years.

Mar. 9: Part-time faculty file intention to change salary column starting in the Spring Quarter with campus Personnel Office (Appendix B.1, C, E, G).

Mar. 15: *Article 19* faculty submit to District Human Resources the annual Early Retirement Service Plan for the following academic year with all required signatures for second and subsequent years of participation (19.6.2.2, Appendix UI). See 19.6.1 for initial year of participation.

Mar. 15: Board notification to probationary or other faculty whose contracts will not be renewed (California Ed. Code).

Apr. 2: Full-time faculty submit written request to return to full-time employment status from *Article 18* pre-retirement reduction in contract (18.4).

Apr. 6: Part-time faculty submit completion of requirements documentation for column change starting in Spring Quarter to campus Personnel Office (Appendix B.1, C, E, G).

Apr. 16: Full-time faculty submit application for Training/Re-Training (Appendix R) to District Office of Human Resources (35.6).

June 1: Full-time faculty submit Professional Growth Activities to campus Personnel Office for salary step advancement (Appendix A, B) and/or Professional Achievement Award application (38.3).

June 30: Full-time faculty file intent to change salary column for (the next) academic year with campus Personnel Office (Appendix A, B).

July 2: Full-time faculty submit Professional Achievement Award application to division dean (38.2.1, 38.3).

Aug. 24: Part-time faculty file intention to change salary column starting in the Fall Quarter with campus Personnel Office (Appendix B.1, C, E, G).

Sept. 17: Full-time faculty submit completion of requirements documentation for salary column change in academic year 2018-19 to campus Personnel Office (Appendix A, B).

Sept. 21: Part-time faculty submit completion of requirements documentation for column change in the Fall Quarter (next academic year) to campus Personnel Office (Appendix B.1, C, E, G).

Key Changes to the 2016-2019 Agreement

- The evaluation document, *Appendix J1*, now includes a section for evaluation of Online instruction.
- *Article 6* (Evaluation) defines the duration of an evaluation of an online course or the online component of a hybrid course. The duration shall not exceed 100 minutes and the evaluation may occur over multiple visits to the course within a seven-consecutive day period.
- Though not included in *Article 6A* (Probationary Faculty), the District and FA reached agreement on a two-year trial to handle the effect of extended leave on the tenure process. See May 30, 2017 *FA News*.
- *Article 16* now includes updated language for Parental Leave.
- Regular and contract full-time faculty and part-time faculty with reemployment preference are eligible to receive up to \$1600 per year for conference attendance.
- Faculty who have either converted an existing online or hybrid course to Canvas or have developed a course in Canvas are eligible for PGA credit or a cash stipend. Applications for PGA credit or the stipend are now available to download on the FA website.

Executive Council Member Sought

The FA Executive Council has an opening beginning in Fall Quarter 2017 for a full-time faculty member from De Anza.

Council members represent and maintain a liaison with a division from their home campus.

The Council typically meets on the first and third Wednesdays of each month from 3:00 to 5:30 p.m., and Council members receive \$100 per meeting.

Interested faculty should email a letter of interest addressed to the Executive Council via the FA office (ElwellSusanne@fhda.edu) by Monday, October 2.

CalPERS Fall Open Enrollment

• Informational packets have been sent to all employees at their home address in late summer. Included are instructions for enrolling online through Secova. A letter will soon follow with the required access pin number. Contact the Benefits Unit (650.949.6224, MyBenefits@fhda.edu) if the packet does not arrive or with any other questions.

• Open enrollment for the 2018 calendar year will take place September 11 to October 7, 2017. During this time, any desired changes to benefit coverage can be made. For those not making changes, the current benefit options will roll over.

Budget and Bond . . .

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albatrosses of district facilities"), are currently being considered for renovation in the proposed Bond. There is concern about even querying poll respondents on their interest in preserving these structures in as much as this might raise said interest, and the costs would be considerable for both. I don't have the space to go into full detail about the cons and pros here, but might it be conceivable to reconfigure the use of these two spaces? The Griffin House has already received designation as a historical structure, so it can't be simply demolished, and the District's efforts to "give it away" (for the sum of \$1) to whomever would see to its removal, were unsuccessful. Why not restore it on the order of the De Anza California History Center,

hold classes in it, use it for meetings, etc.? And even if it would be more cost effective to demolish Flint Center rather than bringing it up to code (leaving us with a seismically upgraded garage without a "center"?), how would the funds be procured (to say nothing of what might be constructed in its stead)? It would seem wiser, in the short term, at least, to take over the management of this currently "outsourced" structure and decide how we might best repurpose it to address the educational needs of our students (another potential enrollment gain?). Yes, there are political as well as financial implications no matter which direction we pursue. We'll just have to wait and see what tangles appear in the twining ahead.