

Discussion of the Commission's Preconditions and Common Standards related to Diversity

May 2011

Overview of this Report

This agenda item provides information about the Commission's Preconditions and Common Standards related to the issue of diversity for the COA's discussion.

Staff Recommendation

This is an information item.

Background

The Commission's Preconditions and Common Standards address the issue of diversity related to the hiring, retention, and promotion of individuals as well as the admission, retention and graduation of candidates. Questions have been raised by the COA on its responsibility related to language in *Common Standard 4: Faculty and Instructional Personnel*. The standard reads as follows:

Qualified persons are employed and assigned to teach all courses, to provide professional development, and to supervise field-based and/or clinical experiences in each credential and certificate program. Instructional personnel and faculty have current knowledge in the content they teach, understand the context of public schooling, and model best professional practices in teaching and learning, scholarship, and service. **They are reflective of a diverse society** and knowledgeable about diverse abilities, cultural, language, ethnic and gender diversity. They have a thorough grasp of the academic standards, frameworks, and accountability systems that drive the curriculum of public schools. They collaborate regularly and systematically with colleagues in P-12 settings/college/university units and members of the broader, professional community to improve teaching, candidate learning, and educator preparation. The institution provides support for faculty development. The unit regularly evaluates the performance of course instructors and field supervisors, recognizes excellence, and retains only those who are consistently effective.

Common Standard 4 states that faculty and instructional personnel must be reflective of a diverse society. The NCATE Standards Handbook (<http://www.ncate.org/LinkClick.aspx?fileticket=nX43fwKc4Ak%3d&tabid=474>) has a Glossary with definitions of terms found in the NCATE Standards and the Glossary was one of the sources for the Commission's Common Standards Glossary. Provided below is the definition of Diversity from the NCATE Handbook.

Diversity. Differences among groups of people and individuals based on ethnicity, race, socioeconomic status, gender, exceptionalities, language, religion, sexual orientation, and geographical area. The types of diversity necessary for addressing

the elements on candidate interactions with diverse faculty, candidates, and P-12 students are stated in the rubrics for those elements.

In addition to meeting the Commission's Common Standards, every institution—public or private college or university, school district, county office of education or other entity affirms that it meets the Commission's General Precondition 3 as part of the initial institutional approval and on-going accreditation processes:

- (3) **Personnel Decisions.** To be granted initial program accreditation or continuing accreditation by the Committee on Accreditation, a program of professional preparation must be proposed and operated by an **institution/district that makes all personnel decisions without considering differences due to gender or other constitutionally or legally prohibited considerations.** These decisions include decisions regarding the **admission, retention or graduation of students, and decisions regarding the employment, retention or promotion of employees.**

California state and federal law

Both federal and California state laws prohibit an employer from discriminating against individuals based on: Race, Religion, Color, National Origin, Disability, Marital Status, Gender, Sexual Orientation, Age, and Pregnancy. But in addition there are Bona Fide Occupational Qualifications that may have an impact on how these laws are implemented for specific job classifications.

In addition to the statements in the Commission's Preconditions and Common Standards, the Commission must follow both federal and state law. Related to the issue of diversity and hiring, promotion and retention of employees means considering the Bona Fide Occupational Qualification (BFOQ) Laws (<http://definitions.uslegal.com/b/bona-fide-occupational-qualification/>)

Bona fide occupational qualifications (BFOQ) are employment qualifications that employers are allowed to consider while making decisions about hiring and retention of employees. The qualification should relate to an essential job duty and is considered necessary for operation of the particular business.

The Bona Fide Occupational Qualifications rule allows for the hiring of individuals based on race, sex, age, and national origin if these characteristics are bona fide occupational qualifications. This is an exception and complete defense to Title VII of the Civil Rights Act of 1964 which protects employees from discrimination based on religion, sex, age, national origin and color at the workplace.

In order to establish the defense of bona fide occupational qualification, an employer must prove the requirement is necessary to the success of the business and that a definable group or class of employees would be unable to perform the job safely and efficiently. An employer should demonstrate a necessity for a

certain type of workers because all others do not have certain characteristics necessary for employment success. However the employer's motivation for excluding the protected class is not significant in evaluating the BFOQ defense. The inquiry focuses on the necessity of using an expressly forbidden classification.

Examples of BFOQ's are: mandatory retirement ages for bus drivers and airplane pilots for safety reasons, churches requiring members of its clergy to be of a certain denomination and may lawfully bar, from employment, anyone who is not a member. However, for positions at a church such as janitors, discrimination based on religious denomination would be illegal because religion has no effect on a person's ability to fulfill the duties of the job. Other examples of bona fide occupation qualifications include the use of models and actors for the purpose of authenticity or genuineness, the requirement of emergency personnel to be bilingual, judged on language competency, not national origin.

Discussion of Precondition, Common Standards and Laws related to Diversity

Staff has requested that the Commission's General Counsel attend the May 2011 COA meeting to respond to any questions about the BFOQ and its impact on the employment, retention or promotion of employees at Commission accredited institutions.