

The California Federation of Teachers Calls on ACCJC to Not Adopt The Unlawful and Unworkable Proposed Restoration Status Policy

Comment

June 25, 2014

In accordance with the Accrediting Commission on Community and Junior Colleges's (ACCJC) recent announcement, the California Federation of Teachers (CFT) hereby submits this Comment on the ACCJC's proposed "Restoration Status" Policy.

On June 11, 2014, the ACCJC unveiled a proposed new policy called "Restoration Status." Under this policy, a college that has been issued a disaccreditation decision can apply for more time to meet ACCJC standards. In order to qualify for the policy, a college cannot have already received an extension of time to meet accreditation standards for "good cause."

However, the new policy is loaded with Draconian rules. This proposed Restoration Status policy is unworkable and would put any college electing this route at the absolute mercy of ACCJC, leaving the college defenseless. ACCJC should reject adopting this particular draft. Additionally, the policy is not necessary in order to meet the needs of City College of San Francisco (CCSF) or, as far as we can determine, other member institutions.

The CFT, elected leaders, faculty, staff, chancellors and college presidents, State officials, and others have been demanding that ACCJC afford colleges sufficient time to meet ACCJC's demands, when they have been identified as deficient, so that a college receives a fair review.

ACCJC has always had the authority to extend colleges more time than two years to meet ACCJC requirements, provided there is **good cause** for more time. The Department of Education (DOE) has confirmed this on numerous occasions, most recently on June 20, 2014 in a letter from Jamienne Studley to Barbara Beno and Sherrill Amador. But instead of using consistently its existing "good cause" policy, ACCJC has proposed this new policy that sends colleges down a pathway that is studded with land mines and requires that the College essentially waive its internal- to-ACCJC due process rights. Furthermore, the proposed policy shuts out the public and constituent groups such as the Academic Senate, faculty and staff, students, labor organizations and the residents of a college's operational area.

Here is a list of problems with the newly proposed policy:

- A. **The new proposed policy is unnecessary – ACCJC already has the tools to extend a college's time for a fair review.** In 2010 ACCJC confirmed for the US Department of Education, its "good cause" policy. That policy recognizes at least four situations in which a college, for good cause, is given more than two years to meet ACCJC requirements.

It can hardly be denied that this new policy is designed to deal with City College of San Francisco (CCSF). In the case of CCSF, ACCJC could, and should, rescind its order of disaccreditation, and then recognize **good cause exists**, allowing CCSF two or more years to meet ACCJC requirements. CCSF's disaccreditation order should be rescinded because, as has been noted elsewhere, ACCJC lacked authority to order CCSF disaccredited at its June 2013 meeting. This is because the Commission sought to increase, by 11, the deficiencies identified by its site visit evaluation team. ACCJC unequivocally stated in its policy handbook that, in this circumstance, ACCJC suspend its consideration of action, and afford CCSF notice of the added alleged deficiencies, and then allow CCSF to respond as to each. It also mandates that ACCJC postpone ruling on CCSF's status until its next meeting. In order to satisfy this policy, ACCJC should immediately rescind its disaccreditation decision, and afford CCSF the requisite notice provided by its policy. As an association governed by California law, ACCJC is required to follow such rules as this one.

Moreover, CCSF satisfies all four of the separate grounds that constitute good cause for an extension of time:

(1) When the institution must reasonably take more than two years to correct a deficiency, while demonstrating substantial progress. This is the case here, as ACCJC told City College it had to review a full, three-year cycle to be able to evaluate CCSF's progress. Under the policy, ACCJC could have extended time for two years, or four, or more, as it had done for numerous California community colleges.

(2) When an external agency is involved that requires sequential steps to take action, such as a State agency. That external agency is the State Chancellor's Office, Board of Governors, and Trustee Robert Agrella. And it was Barbara Beno, according to Chancellor Brice Harris, who made it clear to him starting May 20, 2013, that he needed to involve a state trustee with extraordinary powers, and take over the College. But then, Ms. Beno / ACCJC changed course on him and did not offer the extension.

(3) When consultants and others external to the institution are retained to assist in the resolution of the deficiency, such as a comprehensive fiscal recovery plan. That's what Financial Crisis Management Assistance Team (FCMAT) and Mr. Agrella are doing now, as Ms. Beno was aware would be happening according to Chancellor Harris' declaration.

(4) When an external agency is a participant in resolving the compliance issue, such as when state regulatory personnel are overseeing an activity. Again, that's what FCMAT, the State Chancellor and Agrella are doing. Beno even said so in her email to Harris the night she announced disaccreditation – new leadership would allow the college to survive.

B. The proposed policy affords no due process, in violation of the law. The new proposed

policy specifies that a college that has been notified of disaccreditation, may apply for “restoration” of its accreditation before its termination is effective, or before it has completed any review and appeal process. First, however, ACCJC would have to determine if it is “eligible” to apply for this new status through a “completed eligibility report” and a comprehensive evaluation occurring within four months of the request. The college must also submit a self-evaluation report.

Then, ACCJC makes a decision – either to allow a two year restoration period, or to reject the request because it does not fully meet all eligibility requirements. This “fully meet” standard exceeds the “substantial compliance” standard that is set forth within ACCJC policy, and hence establishes a more stringent, and inconsistent standard.

If ACCJC decides that the college does not “fully meet” all eligibility requirements, or does not demonstrate the ability to “fully meet” all standards within two-years, the termination is reactivated and the college is immediately disaccredited, without any further right to request a review or appeal.

These rules are harsh and violate state and federal law. Both require due process upon an adverse action such as disaccreditation. If a college, after completing such reports and undergoing such review cannot avail itself of due process, then it has been denied its rights under the law.

➤ It has not gone unnoticed that ACCJC’s policy and practice has been to approve unlimited, multi-year extensions for “good cause” regardless of whether a college fully or substantially meets eligibility requirements or ACCJC standards.

- C. **A College granted Restoration Status is denied due process.** Even if a college achieves “restoration status,” its existence hangs in the balance, and depends on this Commission faithfully and fairly implementing its obligations. However, ACCJC’s track record is one of ineptitude and confusion. Due process is essential, however, not simply due to ACCJC’s abysmal record, but also due to the rights at stake – the right to an education possessed by tens of thousands of students and future students, and candidates for education as firefighters, police, nurses, and other occupations.
- D. **The College must risk immediate termination without appeal.** One of the most glaring deficiencies in ACCJC’s new policy is that if ACCJC decides a college applying for Restoration Status is “not in compliance with Eligibility Requirements, Accreditation Standards, and Commission practices, then the termination implementation will be reactivated and the effective date will be immediate. There will be no further right to request a review or appeal in this matter.” (Proposed policy, p. 2)

In other words, if after spending tens or hundreds of thousands of dollars to meet ACCJC requirements, employing the labor of hundreds of college employees, involving the public and students, if the ACCJC – behind closed doors — rejects a college, its

accreditation will be **immediately terminated**. And, the College has **no right to review and appeal**.

This action would terminate the education of thousands of students, and the employment of hundreds or thousands of teachers and staff, with no notice. Such an outcome is unheard of in America's democratic institutions and is inconsistent with ACCJC's responsibilities as a quasi-governmental body making quasi-judicial decisions, affecting fundamental vested rights, such as education and employment.

E. The right of appeal has long been recognized as a fundamental right.

The right to appeal is woven into the fabric of American law and applies to every governmental or, like ACCJC, quasi-governmental agency. It also applies to every private institution, which holds the power to arbitrarily dismiss members. This jettisoning of the right to appeal strikes at the heart of due process, and eliminates a fundamental right protected by both federal and state law. Note that 34 CFR § 602.25 requires that a recognized accreditor such as ACCJC must afford a college whose accreditation has been revoked, a due process hearing. ACCJC's new policy includes no such right to a hearing.

California long ago recognized the importance of the right to appeal, when dismissal from a public benefit or other association is involved. It has been settled law in California since the late 1800s that sanctions of dismissal, or even suspension, by a private association are subject to due process protection, including the right to adequate notice of allegations, and a fair opportunity to present a defense. *Grand Grove of United Ancient Order of Druids of California v. Garabaldi Grove, No. 71, of United Ancient Order of Druids* (1896) 105 Cal. 219. See also *Salkin v. California Dental Association* (1986) 176 Cal. App. 3d 1118, 1122-1124, 224 Cal. Rptr. 352, relying on *Ellis v. American Federation of Labor* (1941) 48 Cal. App. 2d 440, 443-444.

F. Summary action without appeal would be catastrophic.

Disaccreditation is the **capital punishment** of the higher education system. It is a penalty so rare that ACCJC has only previously disaccredited **one** California college – Compton. Compton had multiple problems and years of warnings, and served less than 10,000 students, who had nearby alternatives. CCSF, in contrast, is unique, annually serves many times the number of students, and there are no available, equivalent alternatives. Besides, its educational quality is unmatched, and is the primary source of nurses, firefighters and numerous SF occupations, and one of the US's major colleges serving our Veterans.

If we were dealing not with a college but with a policy aimed at a prisoner convicted of murder and awaiting appeal, then under a criminal law version of what ACCJC has proposed, the prisoner would be expected to surrender their right of appeal in exchange for the opportunity for a commission to determine in secret, if he has been

“rehabilitated.” In this analogy, the prisoner would have to give up his right to appeal. Even worse, if he were denied “rehabilitation” status, the prisoner would be summarily executed, without any right of appeal. Such a result would shock the conscience. This proposed Restoration Status policy is so Draconian that it also shocks the conscience.

A decision by ACCJC at the first or last stage of the Restoration Status process – that the college is not eligible for the process or has failed – means that the college would be summarily closed. In the case of CCSF, this would mean the summary execution of the educational rights of more than 80,000 students (who would lose their education), and 2,000 employees (who would lose their jobs).

Regardless of its motives, ACCJC could make a wrong decision that would not be subject to internal appeal, thereby causing the summary execution of the rights of more than 80,000 students and 2,000 employees. The impact on them, and San Francisco’s residents and economy, would be catastrophic. And does ACCJC intend by this policy that eschewing appeal would also effectively preclude legal action? ACCJC needs to explain this too.

G. ACCJC has proven itself incapable of exercising absolute, unbridled power.

A process whereby a college has no right to appeal from a review means that ACCJC has unbridled power to disregard any and all standards that ACCJC evaluations and decisions must meet. Experience has shown that a process without appeal encourages ACCJC to act illegally or carelessly or ineptly.

First, there is ample evidence ACCJC is incompetent, and its leaders are out of their league. This has been shown by numerous actions, such as increasing the deficiencies from 19 observed by the 2013 external evaluation team, to 30, without postponing its decision, giving notice to the college, and considering the college’s rebuttal.

Second, there is ample evidence of ACCJC’s vindictiveness. -The City Attorney and CFT have alleged that ACCJC disaccredited the college in retaliation for public positions taken by City College leaders, students, and faculty on “open access” for SF residents.

Third, ACCJC never accepts responsibility for errors -- instead its leaders minimize, dismiss or ignore its numerous and continuous faults. ACCJC claims, falsely, that its own sanctions from the DOE are “in line” with other regional accreditors. Not true. **DOE found ACCJC in violation of 19 federal regulations**, while the other higher education accreditors were not in compliance with as few as 4 deficiencies, and the second worst had only 11.- In other words, ACCJC is the worst offender in violating federal accreditation regulations.

Fourth, ACCJC’s Commissioners appear disengaged from the harm they have caused to the very students they are supposed to protect. And the Commission seems determined to maintain secrecy – until recently ACCJC had concealed for more than a decade its “reader” system, in

which its staff work and one or two appointed “readers” “report” to the Commission on how the colleges they accredit should be judged. While President Beno declared in a court declaration, under oath, that she did not participate in Commission decisions, it turns out she and her staff are crucial participants in working with one or two “readers” to evaluate colleges. And no college has ever seen the reader recommendations, nor the public, nor the constituent groups. How fair is this?

In discrediting CCSF despite its excellent academic performance, the Commission ignored the needs of over 2,000 US military veterans attending CCSF to get a usable college education, hundreds of nursing students, and also threatened to toss 20,000 immigrant students out of college.

Fifth, ACCJC will not correct its behavior even when found in violation of the law. Thus, after CFT filed a complaint against ACCJC on April 30, 2013, the DOE issued detailed findings that the two evaluation teams that ACCJC created to evaluate CCSF were illegally constituted –

(1) They had just 2 full-time academic teachers out of 26 members – there should have been at least 13 teachers.

(2) They had serious conflicts of interest -- President Beno’s husband, and her Vice President, were improperly assigned to sit on the evaluation teams.

How did ACCJC react to these violations? It dismissed them as “minor.” It claimed, and still does, that it had no conflicts of interest. And in a report to the DOE filed in Fall 2013, ACCJC claimed that it had now begun to create balanced teams – except it lied. The ‘exemplar’ team it offered to DOE had just one teacher – and several people it claimed were teachers were, instead, high-level administrators who, in one case, had never been a teacher.

And sixth, ACCJC continues its practice of disregarding rules even when it is under a national microscope. It appointed a so-called “independent” appeals panel that had serious conflicts of interest. For example, the chair of the panel, Bill McGinnis, had written a letter of support for ACCJC’s re-recognition review by the DOE, and has been recommended as a consultant by Barbara Beno. So the “neutral” ACCJC appointed was someone whom ACCJC has helped find work, and who has written a letter of support after CFT and others challenged ACCJC’s further recognition by the DOE. Doesn’t sound like a neutral person, does it?

ACCJC has offered up a new, unnecessary policy that is loaded with land mines that could lead, at some future date, to the immediate destruction of CCSF, and the students, faculty and staff, and one of California’s finest community colleges. That’s not the sort of policy that provides colleges what they are entitled to – a fair review, with ample time for such review to be conducted, and the opportunity for appeal at the end of the process if ACCJC should once again violate the law or its own policy.

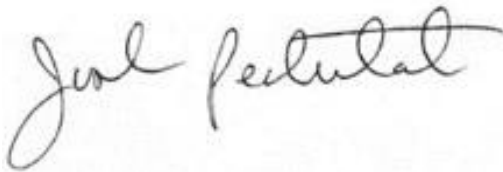
CONCLUSION

♣ This agency’s proposal of Restoration Status is both unnecessary and unlawful.

- ♣ In the case of CCSF it is not needed. This is because ACCJC can rescind its premature termination of CCSF's accreditation, restore the *status quo*, and commence a new, fair review of City College, extending its time period to correct any deficiencies found, for good cause.
- ♣ In the case of any subsequent, similarly situated colleges, ACCJC can apply its good cause for extension policy, making sure to consistently identify when the policy is applied and to record the rationale applied to the extension.
- ♣ The proposed policy is unlawful because it requires City College and any similarly situated college to surrender their fundamental legal rights to a due process appeal hearing before it is disaccredited.

Dated: June 25, 2014

By: Joshua Pechthalt, President CFT

A handwritten signature in cursive script that reads "Joshua Pechthalt".

Tim Killikelly, President AFT Local 2121

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