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*C a l i f o r n i a
C o m m u n i t y
C o l l e g e
I n d e p e n d e n t s*

Just last month, ACCJC correspondence claimed the U.S. Department of Education (DOE) has consistently found ACCJC to be a “reliable authority” for community college accreditations.

But in 2010, the federal DOE Director of Accreditation charged ACCJC with multiple infractions, including: ACCJC’s lack of transparency for not having “clear and effective controls against conflicts of interest;” a “biased and faulty” process for selecting ACCJC Commissioners; non-compliance with U.S. DOE regulations; and the manipulative use of outdated regulations by ACCJC attorneys to prevent the public disclosure of ACCJC documents.

Attached is the 2010 letter containing the U.S. Dept. of Education charges.

David

David Balla-Hawkins, Advocate
California Community College Independents



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

August 24, 2010

Barbara A. Beno, Ph.D.
President
Western Association of Schools and Colleges,
Accrediting Commission for Community and Junior Colleges
10 Commercial Boulevard, Suite 204
Novato, California 94949

Dear Dr. Beno:

As you are aware, the Accreditation Division in the Office of Postsecondary Education (Accreditation Division or Department) received a complaint from the Accreditation Task Force (Task Force) of the Consultation Council of the California Community Colleges Chancellor's Office alleging that the Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (the Commission) did not follow its processes and procedures in the selection of Commissioners. In addition to that complaint, the Accreditation Division also received a complaint from the Academic Senate for California Community Colleges (Academic Senate), which included similar concerns.¹ The Department has concluded its review of those complaints.

As a part of its evaluation, the Department reviewed the allegations raised in the complaints of the Task Force and the Academic Senate for applicability to the Secretary's Criteria for Recognition and requested that your agency respond to the allegations and to questions regarding your agency's application of its policies and procedures. The Department then reviewed all of the documentation for demonstrated compliance with the Criteria.

Based on a review of the documentation provided by the Commission, the Accreditation Division has found that the Commission's processes and procedures by which Commissioners are selected do not meet the Secretary's Criteria for Recognition. Specifically, the Accreditation Division has determined that the Commission is out of compliance with 34 C.F.R. §§602.3, 602.14 (b)(1), 602.14 (b)(3), 602.15 (a)(5), and 602.15 (a)(6) of the Secretary's Criteria for Recognition, as described below:

1. The Commission's constitution and bylaws state that the Commission consists of 19 members, all of whom are appointed by the Commissioner Selection Committee. The Commissioner Selection Committee consists of seven members including at least two administrators, two faculty members, and two representatives of the public. The definition for a public member of the Commission is the same as the Department's definition included in §602.3 of the Secretary's Criteria for Recognition. It states a representative of the public is a person "who is not (1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that

either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation; (2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or (3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.”

The Commission’s bylaws state that the Commission Chair appoints three members (two Commissioners and one individual from a Commission-accredited institution), and the Pacific Postsecondary Education Council appoints one member. The Commission indicated that in order to fill any public members’ seats on the Commissioner Selection Committee, the Commission President contacts the California Community College Trustees Association to request an appointment. The Commission indicated that the California Community College Trustees Association is comprised of individuals who are currently serving as trustees of California Community Colleges. The Accreditation Division determined that a member of a board of trustees of an institution would not meet the definition of a representative of the public in §602.3 and cannot fulfill the role of a public member on the Commissioner Selection Committee. Therefore, the Commission also does not meet the requirement of §602.14 (a)(5) of the Secretary’s Criteria, which requires that the agency have representatives of the public on all decision-making bodies. The Commission must ensure that it follows its own policies regarding the selection of representatives of the public.

2. As stated previously, the Commission’s bylaws state that the Commissioner Selection Committee consists of seven members. The Commission Chair appoints three members, and the Pacific Postsecondary Education Council appoints one member. The Commission bylaws also state that the Academic Senate for California Community Colleges, the California Chief Executive Officers, the California Community College Trustees, and the Hawaii Community College Academic Senate Chairs will appoint the remaining members of the Commissioner Selection Committee.

The Commission indicated that it does not provide any guidance or specific instructions to those organizations as to how to select the appointments to the Commissioner Selection Committee. Since the Commission does not provide any guidance on Commissioner Selection Committee appointments to the organizations, the Commission cannot ensure that the members of the agency’s decision-making body are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization, as required by section §602.14 (b)(1) of the Secretary’s Criteria for Recognition. As this could result in a conflict of interest or the appearance of a conflict of interest, the Commission must demonstrate that it has clear and effective controls to ensure that the Commissioner Selection Committee appointments are not influenced by the leadership of any related, associated, or affiliated trade association or membership organization.

3. As stated previously, the Commission’s bylaws state that the Commissioner Selection Committee consists of seven members including at least two administrators, two faculty members, and two representatives of the public. The Commission Chair appoints three members (two Commissioners and one individual from a Commission-accredited

institution), and the Pacific Postsecondary Education Council appoints one member. The Commission bylaws also state that the Academic Senate for California Community Colleges, the California Chief Executive Officers, the California Community College Trustees, and the Hawaii Community College Academic Senate Chairs will appoint whatever additional faculty, administrators, and representatives of the public are required to complete the composition of the Commissioner Selection Committee.

The Commission indicated that until recently this had been accomplished through an informal process where the Commission President would contact via telephone the president or chair of the appropriate organization, as described in the Commission's bylaws, to request appointments and complete the composition of the Commissioner Selection Committee. In 2010, the Commission provided a request in writing for the appointments to the California Chief Executive Officers and the California Community College Trustees, and requested that the appointments from those organizations be made in writing. This lack of a formal documented process does not provide transparency to the selection process and therefore, does not provide clear and effective controls against conflicts of interest, as required by section §602.15 (a)(6) of the Secretary's Criteria for Recognition. The Commission must demonstrate that it has clear and effective controls against conflict of interest, or the appearance of conflicts of interest, in the selection process.

4. As stated previously, the Commission's bylaws state that the Commission Chair appoints three members (two Commissioners and one individual from a Commission-accredited institution) for the Commissioner Selection Committee. In seven of the nine Commissioner Selection Committee meetings that have been held since 2005, the Commission Chair or Vice Chair has been either a member or ex-officio member of the committee, appointed by the Commission Chair. There was one Commissioner Selection Committee where both the Commission Chair and Vice Chair were members.

In addition, five of the nine Commissioner Selection Committee meetings have included three or four Commissioners as members. Even though the Commission bylaws do not address the issue of the appointment of Commission officers nor the maximum number of Commissioners that may be appointed to the Commissioner Selection Committee, the inclusion of officers of the Commission and/or a high percentage of Commissioners as members could result in their wielding undue influence over the Committee. Therefore, this practice does not ensure that the Commission has implemented guidelines for each member of the decision-making body to avoid conflicts of interest, as required by §602.14 (b)(3) of the Secretary's Criteria for Recognition. The Commission must demonstrate that it follows its own policy on the Professional and Ethical Responsibilities of Commission Members regarding conflicts of interest.

5. As stated previously, the Commission's bylaws state that the Commissioner Selection Committee consists of seven members. Of the nine Commissioner Selection Committee meetings that have been held since 2005, one individual has served on all nine, two have served on eight, one has served on seven, and one has served on five. The Commission bylaws do not address the number of times an individual can serve on the Commissioner

Selection Committee. However, the Commission's practice does not promote a diversity of membership, and the continuity of a majority of the membership could influence decision-making. Therefore, the Accreditation Division determined that this practice does not demonstrate that the Commission has clear and effective controls against conflict of interest, or the appearance of conflicts of interest, in the selection process, as required by §602.15 (a)(6) of the Secretary's Criteria for Recognition. The Commission must demonstrate that it has clear and effective controls against conflict of interest, or the appearance of conflicts of interest, in the selection process.

6. The Commission indicated that there is no public notice of the members of the Commissioner Selection Committee. The Commission bylaws do not address the public notice of the members of the Commissioner Selection Committee. However, this lack of public notice does not provide transparency to the selection process and, therefore, does not demonstrate that the Commission has clear and effective controls against conflict of interest, or the appearance of conflicts of interest, in the selection process, as required by §602.15 (a)(6) of the Secretary's Criteria for Recognition.

The Accreditation Division requests that you take immediate steps to correct the areas of non-compliance identified in this letter. Please provide a report to the Accreditation Division by November 1, 2010, to include your plan of corrective action to ensure that the Commission's processes and procedures by which Commissioners are selected comply with the Secretary's Criteria for Recognition, and to include timelines for completion of such actions. A follow-on report of your agency's corrective actions will be requested.

Along with your response, we received a memorandum from your attorney requesting that we withhold from public disclosure certain information you provided about particular individuals and accrediting activities contained in Appendices L, N and P of your response. The basis cited for this request is an outdated regulation 34 C.F.R. §602.30(c) that does not accurately reflect the Secretary's disclosure obligations under FOIA and other statutes. The regulation was revised during negotiated rulemaking in 2009 to reflect applicable law. In revising the regulations, the Department spelled out the options available to agencies when submitting material that the agencies view as confidential to the Department for review in recognition proceedings.

602.31(f) Public availability of agency records obtained by the Department. (1) The Secretary's processing and decision making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. §552; the Trade Secrets Act, 18 U.S.C. §1905; the Privacy Act of 1974, as amended, 5 U.S.C. §552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies may--

(i) Redact information that would identify individuals or institutions that is not essential to the Department's review of the agency;

(ii) Make a good faith effort to designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(4). A

blanket designation of all information contained with a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded;

(iii) Identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from disclosure; and


(iv) Ensure documents submitted are only those required for Department review or as requests by Department officials.

(2) The Secretary processes FOIA requests in accordance with 34 C.F.R. part 5 and makes all documents provided to the Advisory Committee available to the public.

We will consider whether any of the documents or portions of the documents you provided can be withheld from public disclosure consistent with applicable laws should we receive a FOIA request.

If you have any questions regarding this letter's content, please contact Carol Griffiths, Branch Chief, Accrediting Agency Evaluation Unit at 202-219-7035 or by email at Carol.Griffiths@ed.gov or Elizabeth Daggett, Education Program Specialist, Accrediting Agency Evaluation Unit, by phone at 202-502-7571 or email at Elizabeth.Daggett@ed.gov. Thank you for your cooperation in this matter.

Sincerely,


Kay W. Gilcher, Director
Accreditation Division

Enclosure

Cc: Jack Scott, Ph.D.
Chancellor
California Community Colleges

Jane Patton
President
Academic Senate for California Community Colleges

ⁱ Please see enclosure for the complaint received from the Academic Senate.