

Date of Hearing: April 29, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Das Williams, Chair

AB 1942 (Bonta) – As Amended: April 10, 2014

SUBJECT: Community colleges: accreditation.

SUMMARY: Requires the California Community Colleges (CCC) Board of Governors (BOG) to establish minimum operating conditions for CCCs to receive state apportionment; removes the requirement that CCCs be accredited; adds six additional appointees to the BOG; and, establishes numerous requirements on accrediting agencies that provide accreditation of CCCs.

Specifically, this bill:

- 1) Would require the BOG to establish: (a) minimum conditions for state apportionment that are relevant and material to federal law and quality of education, are widely accepted by educators and specified other entities, and are consistent with state laws and policies; and, (b) standards that show these conditions have been met.
- 2) Requires the BOG to comply with the Administrative Procedures Act and seek and consider input, in establishing minimum conditions, from CCC districts, students, and academic and nonacademic employees.
- 3) Provides that accreditation status is not dispositive of the determination of compliance, but that the BOG may give due consideration to the accreditation status by a federally recognized accrediting agency of compliance with minimum conditions, unless the BOG finds good cause not to rely on the accreditation status. Provides that “good cause” includes:
 - a) The accrediting agency’s failure to comply with written policies or procedures in the course of evaluation;
 - b) Finding or determination by the US Department of Education (USDE) that the accrediting agency has failed to comply with the Criteria for Recognition of Accrediting Agencies by the US Secretary of Education;
 - c) The accrediting agency’s failure to comply with federal or state laws or regulations in the course of evaluation;
 - d) A conflict of interest, or the appearance of a conflict of interest, on the part of the accrediting agency in the course of evaluation;
- 4) Requires the BOG to conduct an independent investigation to determine compliance with minimum conditions prior to determining a CCC district has failed to meet conditions.
- 5) Requires the BOG to, before finalizing determination of a CCC district’s compliance with minimum conditions, publically provide the basis of the determination and provide an opportunity for the district to respond and the public to comment.

- 6) Adds to the BOG six additional members, three appointed by the Senate and three appointed by the Assembly.
- 7) Authorizes the BOG to designate a federally recognized accrediting agency to accredit CCCs; provides that the accrediting agency currently designation by BOG regulations shall remain in place until this authority is exercised. Requires the designated accrediting agency to base accrediting decisions solely on compliance with the minimum conditions established pursuant to the aforementioned provisions and requires all of the following:
 - a) The accrediting agency to make available to a CCC the minimum conditions and requirements for demonstration of compliance established pursuant to the aforementioned BOG standards;
 - b) Accrediting agency compliance with Bagley-Keene Open Meeting Act for all meetings relating to the accreditation of a CCC;
 - c) Disclosure of all CCC accreditation related documents pursuant to the California Public Records Act;
 - d) The Accrediting agency is required to preserve all documents for at least 10 years, and reports, evaluations, recommendations, and decisions indefinitely.
 - e) The accrediting agency to disclose salaries and benefits of employees involved in CCC accreditation, any member charges imposed on a CCC, incomes derived from a CCC, and expenditures for activities related to CCC accreditation.
 - f) Prohibits accrediting agency governing board members from being nominated by officers or employees of the accrediting agency; and prohibits governing board terms from being longer than two consecutive three-year terms;
 - g) The accrediting agency to have a neutral and objective conflict of interest policy;
 - h) Accreditation evaluation teams:
 - i) To consist of 50% teachers of community colleges, and 50% to include nonsupervisory, non-managerial academic employees, classified employees, and administrative employees of a community college; and,
 - ii) To be independent of the accrediting agency and the college being evaluated and neither a member of the governing body or employee of the accrediting agency during the prior six years or a near relative of either.
 - i) In assessing sanctions, requires consideration of the length of time of substantial compliance, seriousness of deficiencies with respect to impact on quality of education;
 - j) The accrediting agency to provide the CCC all documents, including but not limited to, evaluations and recommendations at least 14 days in advance of any meeting regarding the accreditation of the institution;

- k) The accrediting agency to provide the CCCs and the public with reasonable opportunity to present written and oral evidence and argument in regard to the accreditation decision;
 - l) Sanctions decisions to be supported by findings and conclusions;
 - m) If an accrediting agency intends to impose a sanction more severe than that recommended by the evaluating team, or finds a deficiency not noted in the evaluation team report, the hearing on imposing the sanction to be adjourned (and taken up at a subsequent hearing) to provide the CCCs sufficient time to respond to the accrediting agency before a decision;
 - n) The college to be provided time to satisfy compliance prior to a sanction that would revoke or suspend accreditation is imposed; and,
 - o) The accrediting agency to participate in an appellate proceeding, with specified procedures, rights, and grounds for appeal, before an arbitrator, hearing officer or a panel appointed by the CCC Chancellor's Office (CCCCO), as specified. Requires the accrediting agency to present facts that support the recommended actions. Allows the CCC to submit new evidence to support compliance. Requires the CCC to be deemed accredited for no less than two semesters following the issuance of the decision by the appeals committee. Requires the appeals hearings to be open to the public.
- 8) Provides that provisions requiring due process procedures and compliance with the Bagley-Keene Open Meeting Act are declarative of existing law and apply to all pending accreditation proceedings.
- 9) Provides that this bill does not affect accrediting agency activities relative to private educational institutions or public institutions operating outside of this state. Provides that this bill does not affect the authority of USDE.
- 10) Provides for severability of provisions, should any portions of the law be held invalid.

EXISTING LAW:

- 1) Establishes the BOG to provide general supervision over the CCC and requires the BOG to prescribe minimum standards for CCC formation and operation (Education Code §66700);
- 2) Requires the BOG to develop minimum standards governing academic standards, employment policies and shared governance; evaluate CCC fiscal and educational effectiveness and provide assistance when districts encounter management difficulties; administer state funding and establish minimum conditions entitling CCC districts to receive state funds; review and approve educational programs; and, carry out other functions as provided in law (EDC §70901);
- 3) BOG regulations (5 CCR §51016) require CCC to be accredited by the Accrediting Commission for Community and Junior Colleges (ACCJC).

FISCAL EFFECT: Unknown

COMMENTS: Purpose of this bill. According to the author, "Higher education accreditation ensures that colleges provide an education that meets acceptable levels of quality. Accreditation of a college is required for students to be eligible to receive state and federal financial aid. The ACCJC was appointed as the accreditor for CCC. ACCJC is authorized to operate by the USDE and is the only accrediting agency for CCCs due to current state regulations.

ACCJC requires CCCs to meet a significantly higher number of standards than is required by federal law. While the federal government requires that colleges meet 9 basic standards, ACCJC demands compliance with nearly 50. In addition, ACCJC has issued sanctions at a rate substantially higher than accrediting entities throughout the nation. In 2009, the ACCJC accounted for 44% of the total sanctions given to all higher education institutions in the nation. Many of these sanctions have been inconsistent between the community colleges ACCJC accredits. For example, City College of San Francisco failed to meet 9 out of 11 standards identified by the ACCJC and now it is on the verge of being disaccredited; however 2 other colleges failed all 11 standards and were only given a warning.

The federal government has recognized the need for change on this issue. On January 28, 2014, USDE notified ACCJC it was in violation of 15 federal regulations, including those concerning due process, notification of accrediting decisions, and review and enforcement of standards.

Existing law does not require standards for due process, transparency or accountability of accrediting entities. For example, existing law does not require any notice, to the public or the community college under review, disclosing accreditor evaluations or reasons for sanctions. In addition, California regulations only allow one accrediting entity. Without competition and minimum required standards for public transparency, ACCJC will be allowed to continue to have a negative impact on community colleges, making it difficult for students to attain an affordable education. The standards in this bill are necessary to ensure that CCCs are receiving a fair and proper accreditation, based on standards that accurately reflect the state's goals."

Background on accreditation. Accreditation is a voluntary, non-governmental peer review process used to determine academic quality. Accrediting agencies are private organizations that establish operating standards for educational or professional institutions and programs, determine the extent to which the standards are met, and publicly announce their findings. Under federal law, USDE establishes the general standards for accreditation agencies and is required to publish a list of recognized accrediting agencies that are deemed reliable authorities on the quality of education provided by their accredited institutions. There are three basic types of accreditation:

- 1) **Regional Accreditation:** There are six USDE-recognized regional accrediting agencies. Each regional accreditor encompasses public, the vast majority of non-profit private (independent), and some for-profit postsecondary educational institutions in the region it serves. California's regional accrediting agency is separated into two commissions: ACCJC and the Senior College and University Commission (WASC-Sr.).
- 2) **National Accreditation:** National accreditation is not based on geography, but more focused to evaluate specific types of schools and programs. National accreditation is designed to allow nontraditional colleges (trade schools, religious schools, certain online schools) to be compared against similarly designed institutions. Different standards and categories are measured, depending on the type of institution.

- 3) **Specialized/Programmatic Accreditation:** Offered by accrediting agencies that represent specific fields of study, these agencies do not accredit entire colleges but instead accredit the programs within colleges that prepare students for the specific field or industry. In most cases, specialized accreditation alone does not enable participation in state and federal financial aid programs.

As noted, accreditation is regulated by the federal government; institutional accreditation is a requirement for participation in federal financial aid programs. Under federal regulations, accrediting agencies are required to meet general outlined standards, but specific processes and quality standards are left to each accrediting agency to determine.

Some states have established standards regarding accreditation recognition for the purpose of state-level regulation and state financial aid programs; and, it appears that some accrediting agencies participate in state-level requirements. However, an accrediting agency's decision to participate in state-level standards is unrelated to their federal recognition.

ACCJC. ACCJC is the regional accrediting agency for community colleges in the western region (California, Hawaii, and U.S. territories). Commission membership consists of the institutions ACCJC has accredited; the 19 ACCJC commissioners are elected by a vote of the presidents of the member-colleges and serve up to two three-year terms. Commissioners must fall within the following categories:

- 1) One representative of the CCC Chancellor's Office;
- 2) One representative from the Hawaii community colleges system office;
- 3) At least five academic faculty;
- 4) At least three public members;
- 5) At least three community college administrators;
- 6) At least one independent institutional representative;
- 7) At least one representative of WASC Sr. accredited institutions;
- 8) At least one representative of the institutions in the American Affiliated Pacific Islands;

ACCJC bylaws govern, among other areas, commission meetings, responsibilities of commissioners, and the appeal process for institutions appealing a denial or termination of accreditation. ACCJC bylaws may be amended by a majority vote of the Commissioners. Under ACCJC bylaws, the President (Chief Executive Officer) is appointed, and may be removed, by the Commissioners. The President is responsible for general supervision, direction, and control of ACCJC operations.

Section 1: BOG minimum standards and accreditation. Under current regulations, BOG relies on accreditation by ACCJC to ensure that CCCs have met the minimum educational quality standards required to receive state apportionment funding. Section 1 of this bill would require the BOG to, instead, establish specific minimum standards and would require the BOG to

evaluate CCCs against those standards to determine eligibility for apportionment funding. The BOG would be authorized to rely, to a limited degree, on accreditation; however, only if the accrediting agency agrees to various statutory requirements (See: Section 3: Requirements on accrediting agencies). Accreditation would no longer be required if the CCC otherwise meets the new BOG standards. In regards to Section 1 of this bill, the Committee should consider:

- 1) Should the state continue to fund unaccredited CCCs? This bill would effectively allow an unaccredited CCC to continue to receive state apportionment funding. However, under existing provisions of federal and state law, an unaccredited CCC would be ineligible for financial aid programs. It is also likely that students at an unaccredited CCC would have difficulty transferring credits earned to other colleges and universities.
- 2) Should CCCs be required to undergo accreditation and a BOG quality process? This bill would require BOG to establish minimum standards for receipt of apportionment funding and would allow BOG to rely on accreditation to determine compliance only when an accrediting agency has agreed to the requirements outlined in Section 3 of this analysis. As previously indicated, the ability of California to mandate accreditation agency activities is severely limited as accreditation is regulated by the federal government.

In speaking with accrediting agency representatives, Committee staff understands that it is very unlikely that an accrediting agency would agree to the terms outlined in this bill. In the event no accrediting agency meets the requirements of the bill, CCCs would need to prove compliance with BOG minimum standards through a process established by BOG. Accreditation is required for participation in federal and state financial aid programs and, generally, for transfer of credits to other higher educational institutions; it would still be necessary for CCC to retain ACCJC accreditation for these purposes.

Currently there is one CCC at serious risk of losing accreditation: City College of San Francisco. Yet, under the provisions of this bill, the other 111 CCCs, whom are not currently at risk of losing accreditation, would likely be required to continue their ACCJC accreditation as well as undergo this new BOG review process. An accreditation review is a significant and time-consuming process; the Committee should consider the impact on CCC operations if colleges are required to undergo a full institutional accreditation process by, essentially, two accrediting agencies: ACCJC and, under the provisions of this bill, BOG.

The author and Committee may wish to consider striking Section 1 of this bill and, instead, requiring the BOG/CCCCO to establish a Task Force to report to the Legislature on the circumstances under which it may be appropriate to allow a CCC that has lost (and is seeking to regain) accreditation to retain eligibility for apportionment funding, on a limited term basis.

Section 2: BOG membership. This bill would expand the BOG membership from 16 to 22 voting members; adding three members appointed by the Senate Rules Committee and three appointed by the Speaker of the Assembly. The policy rationale for this change is unclear.

In the absence of a clear rationale for this change, the author and Committee may wish to consider removing Section 2 from the bill.

Section 3: Requirements on accrediting agencies. This bill would allow CCC governing boards to choose their own accrediting agency, and would establish numerous requirements on an accrediting agency recognized by the BOG to accredit CCCs. The Committee should consider:

- 1) Competition in accreditation. This bill would allow CCC governing boards to choose their own accrediting agency, so long as that accrediting agency is recognized by the USDE. As previously outlined, while the federal government sets base requirements for accrediting agencies, each agency is provided broad authority to establish standards and the processes for measuring those standards. The author argues that ACCJC standards are higher than other accrediting agencies and CCCs should be allowed to shop for alternative accreditation options. However, the Committee should consider if competition among accreditors would result in a race to the bottom in regards to accreditation standards. Are lower/fewer quality standards in the best interest of California's students and economy?

It should be noted that California and Hawaii are the only two states in the nation with two regional accrediting agencies: ACCJC for community colleges and WASC Sr. for universities. The California Master Plan for Higher Education establishes clear requirements for integration and collaboration between CCCs and our public universities. It may be appropriate to evaluate whether this current process serves the state's needs, or whether a single regional accrediting agency would better meet California's higher education goals.

- 2) Accrediting agencies as public entities. This bill establishes numerous requirements on an accrediting agency providing accreditation of CCCs. The requirements include the composition of review committees, the standards by which CCCs are evaluated, document retention, Bagley Keene open meeting requirements, Public Records Act requirements, independent appeal process requirements, among other requirements. As previously indicated, accrediting agencies are private membership-based non-profit organizations recognized by the USDE. While these agencies provide accreditation of institutions receiving public funding, they are not themselves public entities.

Certainly a strong argument can be made that, because of the role accrediting agencies play in oversight of institutions receiving public funding, there should be additional transparency in the accreditation process. The ability of the state to enforce these requirements, however, is virtually non-existent. Accrediting agencies could simply choose not to provide accreditation of colleges in California; this would, as previously outlined, effectively eliminate CCC student eligibility for state and federal financial aid, and place at risk the transferability of student credits to other higher education institutions.

As previously outlined, accrediting agency operations are largely determined by their President and commissioners, whom are elected by the accredited college presidents. With 112 CCC members of ACCJC, there appears to be an opportunity for CCCs who are dissatisfied with ACCJC operations and leadership to work to enact changes to ACCJC policies and standards.

The author and Committee may wish to consider striking Section 3 of the bill and, instead requiring the accrediting commission providing accreditation of CCCs to report to the Legislature regarding accreditation decisions affecting CCCs, and, on a biannual basis, policy changes affecting the accreditation process. In the event that ACCJC refuses to comply with

this requirement, the CCCCCO, who maintains a representative on ACCJC, could be required to transmit this information to the appropriate Legislative policy committees.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers
California Labor Federation
California School Employees Association
California Teachers Association
Los Angeles College Faculty Guild
Peralta Federation of Teachers
San Francisco Community College Federation of Teachers
San Jose/Evergreen Federation of Teachers
San Mateo Community College Federation of Teachers

Opposition

Chief Executive Officers of the California Community Colleges

Analysis Prepared by: Laura Metune / HIGHER ED. / (916) 319-3960