

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1397 (Ting) – As Amended April 14, 2015

SUBJECT: Community colleges: California Community Colleges Fair Accreditation Act of 2015

SUMMARY: Establishes the California Community Colleges (CCC) Fair Accreditation Act of 2015 (Act) and requires the accrediting agency for CCCs to meet specified operational standards. Specifically, **this bill:**

- 1) Establishes the following requirements for the accrediting agency's decision making body and visiting teams:
 - a) Requires that no less than 50% of visiting teams be composed of academics and defines "academics" as someone who is currently, or has recently, directly engaged in a significant manner in postsecondary teaching or research.
 - b) Prohibits any person from serving on a visiting team who has a conflict of interest, defined as any circumstance in which an individuals' capacity to make an impartial or unbiased recommendation may be affected by:
 - i) Prior, current, or anticipated affiliation with the institution under review.
 - ii) Paid service in any capacity to the institution under review.
 - iii) Serving as, or having a near relative serving as, a current member, staff member or consultant of the agency's decision making body.
 - iv) Serving as, or having a near relative serving as, a current member, staff member or consultant of the institution's governing body.
 - c) Requires a prospective member of a visiting team to submit an appropriate disclosure form to the agency, under penalty of perjury, that he/she does not violate the conflict of interest criteria. Requires copies of these forms to be provided to the institution under review.
 - d) Requires every member of the agency's decision making body and staff to annually file a form that identifies all sources of earnings that derive from the field of education, or from entities that perform services for any CCC located in California, or from organizations that engage in lobbying or representational activities for CCC.
- 2) Requires all of the following for meetings of the accrediting agency for CCCs:

- a) Members of the public who desire to appear at agency meetings must have an opportunity to attend those meetings.
 - b) A sufficient length of time must be allowed for public comment, and public comment must be allowed prior to action related to an institution's accreditation.
 - c) Accreditation decisions must be made by a vote of the accrediting agency's decision-making body in a public meeting. The vote of each member and the minutes from the meeting must be recorded and posted to the agency's Internet Web site.
- 3) Prohibits any officer or employee of the agency with an actual or appearance of a conflict of interest to be disqualified from participating in discussion and voting and defines conflict of interest to mean:
- a) Prior, current, or anticipated affiliation with the institution under review.
 - b) Paid service in any capacity to the institution under review.
 - c) Serving as, or having a near relative serving as, a current member, staff member, or consultant of the institution's governing body.
- 4) Requires the agency to preserve all documents generated during an accreditation-related review, including, but not necessarily limited to, email correspondence, for no less than 36 months after the completion of an accreditation-related review. All reports, evaluations, recommendations, and decision documents generated during an accreditation-related review shall be retained indefinitely.
- 5) Requires the agency's accreditation-related decisions to be based on written, published standards, and shall be in accordance with, and not be inconsistent with, state and federal statutes and regulations.
- 6) Requires the agency to afford appropriate deference to the activities or operations of the institution under review that are consistent with the requirements of the state law.
- 7) Prohibits revisions from being made by the agency to a proposed visiting accreditation team report unless the revision is shared with the members of the visiting accreditation team and with the institution under review, and each is afforded an opportunity to comment on the revision.
- 8) Establishes the following due process requirements:
- a) A Community College District (CCD) must be given advance notice of proposed visiting accreditation team reports, so that the college or district may respond to correct factual errors or dissent from conclusions. The institution under review must be afforded adequate time to review the reports before a meeting of the agency's decision-making body at which a decision relating to the institution's accreditation is to be made, which

must be no less than six weeks before the meeting. Provides the institution under review may respond to these reports in writing, orally at the meeting, or in both of those ways.

- b) Any visiting accrediting team recommendation for action must be shared with the institution under review at least six weeks before a meeting of the agency's decision-making body, so that the institution may decide whether and how to respond to the recommendation. Any recommendation for action made to the agency's decision-making body by a person employed by or representing the agency, including its staff, agents, and employees, must be shared with the institution subject to the recommendation at least six weeks before a meeting of the agency's decision-making body relating to the recommendation.
- 9) Requires the agency to have a written policy, consistent with federal law, that does both of the following:
- a) Identifies a period for an institution to correct any deficiencies that have prevented the institution from receiving full accreditation; and,
 - b) Provides criteria for altering that period.
- 10) Requires the aforementioned policy to be published, and to provide a process through which an institution may submit applications for an extension, even if a decision has expressly denied such an extension. An application for an extension, and the decision of the agency as to the application, shall be made publicly available.
- 11) Requires all of the following in regards to the agency's appeals process:
- a) Provides that whenever the agency's decision-making body issues a sanction of probation or a more serious sanction, the institution subject to the sanction shall be given written notice of the alleged sanctionable offenses or deficiencies.
 - b) Provides that the institution must be afforded an opportunity to submit an appeal of the decision to issue the sanction.
 - c) Establishes that the burden of proof for the agency to issue the sanction shall rest with the agency.
 - d) Provides that an appeal shall be heard by a panel appointed by the chancellor.
 - e) Provides that an institution filing an appeal has the right to file an application to present new or additional evidence to the panel.
 - f) Provides that the appeal panel shall, in its discretion, determine whether to accept the new or additional evidence.

EXISTING LAW:

- 1) Establishes the CCC Board of Governors (BOG) to provide general supervision over the CCC and requires the BOG to prescribe minimum standards for CCC formation and operation (Education Code Section 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; requires the CCC BOG, in determining if a CCC district satisfies the minimum conditions for receipt of apportionment funding, to review the accreditation status of the CCCs within that district review and approve educational programs (EDC Section 70901).
- 3) Requires the accrediting agency for CCCs to report to the appropriate policy and budget subcommittees of the Legislature upon the issuance of a decision that affects the accreditation status of a community college and, on a biannual basis, any accreditation policy changes that affect the accreditation process or status for a CCC; and, requires the CCC Chancellor's Office to ensure that the appropriate policy and budget subcommittees are provided the aforementioned required information (EDC Sections 72208).
- 4) BOG regulations (5 CCR Section 51016) require CCCs to be accredited by the Accrediting Commission for Community and Junior Colleges (ACCJC). However, BOG recently approved regulatory changes to remove the explicit requirement of accreditation by the ACCJC. The regulatory change would provide that accreditation shall be determined only by an accrediting agency approved recommended by the CCC Chancellor and approved by the BOG. The Board is authorized to approve only an accreditor recognized and approved by the U.S. Secretary of Education (USDE) under the Higher Education Act of 1965 acting within the agency's scope of recognition by the Secretary.

FISCAL EFFECT: Unknown

COMMENTS: *Purpose of this bill.* According to the author, AB 1397 establishes reasonable parameters under which any accreditation agency should operate in the course of overseeing California's community and junior colleges. The author believes this legislation creates strong conflict of interest policies, provides due process to our education institutions and stakeholders, requires open decision-making, and creates a meaningful appeals process.

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. Accrediting agency membership consists of the accredited institutions and organizational activities are funded through fees/dues required of accredited institutions. Under federal law, the USDE establishes "criteria for recognition" of an accrediting agency and publishes a list of "recognized" agencies. Institutions must be recognized in order to participate in federal financial aid programs. Under California law, institutions must be accredited in order to participate in the Cal Grant Program. Accreditation, and most commonly regional accreditation, is established by California's public

and independent universities as a requirement for transfer of educational credits earned by a student at another institution.

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.

ACCJC controversy. Between 2003 and 2008, ACCJC had placed 37% of CCCs on "sanction" (at risk of losing accreditation). A study of other regional accreditors showed that during this same time, the percentage of community colleges being sanctioned ranged from 0 to 6%. The large number of penalties for community colleges under ACCJC's jurisdiction led community college leaders, faculty, and staff to, through the CCC Chancellor's Office (CCCCO) Consultation Council, review and make recommendations regarding ACCJC's actions. Under the leadership of then-Chancellor Jack Scott, the group made a series of recommendations largely designed to focus ACCJC on institutional improvement rather than compliance. In a written response to Chancellor Scott's recommendations, ACCJC defended current practices and made suggestions of how the CCCCOC could assist colleges in meeting requirements.

The author also points to the following as evidence of deficiencies at ACCJC:

- 1) *USDE.* In two letters from the USDE to ACCJC (dated August 13, 2013 and January 28, 2014), the USDE found the agency to be out of compliance with several standards set by the Secretary of Education's Criteria for Recognition, including:
 - a) The ability to demonstrate that the agency's policies and decisions to grant or deny accreditation are widely accepted or supported by educators, educational institutions, licensing bodies, practitioners and employers in the professional and vocational fields.

- b) Having effective mechanisms for evaluating an institution's compliance with the agency's standards before reaching a decision to accredit colleges.
 - c) Providing due process to institutions, including giving the institution written specification of its requirements in making accreditation decisions and giving the institution a reasonable amount of time to respond.
- 2) *Bureau of State Audits (BSA)*. In June of 2014, the BSA released an audit of ACCJC's application of the accreditation process. The audit was conducted at the request of the Joint Legislative Audit Committee (JLAC) following concerns among several legislators over the ACCJC decision to terminate accreditation for City College of San Francisco (CCSF). The audit listed a number of concerns with the existing accreditation process and decision-making, including:
- a) Inconsistency in the application of the accreditation process and decisions, including granting different colleges different amounts of time to resolve sanctions and comply with accreditation standards.
 - b) Serious deficiencies in its appeals process, including the lack of a definitive right for colleges to introduce new evidence when appealing a decision.
 - c) A lack of transparency in deliberations regarding an institution's accreditation status; 38% of college executives surveyed felt that the decision-making process was not appropriately transparent.
- 3) *California Superior Court*. In August 2013, San Francisco City Attorney Dennis Herrera filed a case against ACCJC; *People ex. rel. Herrera v. ACCJC, Case No CGC-13-533693*. Superior Court Judge Curtis E.A. Karnow found that ACCJC violated state and federal laws and regulations. In February 2015, Judge Karnow ordered ACCJC to allow CCSF to respond to the 2013 basis for termination, and then to take action, consistent with law, to rescind or reaffirm the 2013 termination. The Judge also noted that "under federal law it is ACCJC, and not this court, which exercises its discretion with respect to accreditation decisions."

Should the state regulate accrediting agencies? To date, the California statute has not directly intervened in the authority of an accrediting agency or the accreditation process. This bill sets a precedence that the state has a role in the peer-review and oversight provided by an accrediting agency. *A primary question for the Committee to consider is the appropriateness of state-level regulation of accrediting agencies.* As previously outlined, this bill establishes numerous requirements on the CCC accrediting agency. Proponents argue that accrediting agencies play an important role in oversight of institutions receiving public funding, and that the public has an interest in fairness in accreditation. However, the Community College League of California (League) argues that accreditation is meant to be a peer-review process, governed by a national standard. The League argues this bill would make it very difficult for the agency to comply with federal requirements and attract qualified staff, visiting team members, or commissioners.

Can the state regulate accrediting agencies? The state has the authority to regulate an accrediting agency similar to regulation of any private business. As with private business, an accrediting agency could choose not to provide accreditation of colleges in California. If CCCs were unable to identify an accrediting agency willing to meet the state's requirement, effectively, CCC students would lose eligibility for state and federal financial aid, and the ability of CCC students to transfer educational credits to other higher education institutions could be at risk.

Alternative approach. In response to BSA recommendations, the CCCCO began gathering input from a broad range of CCC stakeholders. Accreditation discussions are occurring through the CCC Consultation Council as well as through a Task Force on Accreditation established by CCC Chancellor Harris. According to the CCCCO, once the Task Force has completed its work and sufficient information gathering has been accomplished, the CCCCO will move forward on recommendations to improve CCC accreditation. *As an alternative to direct regulation of accrediting agencies, as proposed in this bill, the Committee could require the CCC Chancellor to report to the Legislature regarding the Task Force on Accreditation recommendations for improving the CCC accreditation process.*

There are six USDE-recognized regional accrediting agencies. California's regional accrediting agency is, unlike the others, separated into two commissions for postsecondary education: ACCJC and the Senior College and University Commission (WASC-Sr.). California's public four-year institutions are accredited by WASC-Sr. With California's focus on student transfer from CCC to four-year institutions, and the recent creation of a CCC baccalaureate pilot program, it may be appropriate to examine whether California would benefit from a single regional accreditor. *If the Committee chooses the aforementioned recommendation, the Committee may also wish to direct the Task Force to look specifically at potential benefits of establishing a single accreditor systemwide, including the potential of WASC Sr. assuming accreditation responsibilities for CCCs.*

Issues to consider. If the Committee determines that the state should regulate accrediting agencies, the Committee may wish evaluate how the requirements of this bill align to the federal criteria for recognition and (a non-exhaustive review of) the practices of accrediting agencies across the country. As previously noted, an accrediting agency could choose not to operate in California in order to avoid these requirements. Further, an accrediting agency determined by USDE as noncompliant with criteria for recognition could lose recognition. In both cases, the ability of an institution to be accredited by a recognized accrediting agency – and receive federal financial aid funds, and ensure student transferability – could be threatened.

- 1) *Composition of evaluation teams.* This bill requires at least 50% of visiting teams be composed of academics. Federal criteria for recognition specify that evaluation and decision making bodies of accrediting agencies must have academic personnel and educators and practitioners, however an exact percentage is not required. A non-exhaustive search has not identified any accrediting agency that specifies an exact percentage of academics. In *People ex. rel. Herrera v. ACCJC* the People's expert witness described the proper number of academics on a visiting team as highly variable; the Judge ultimately determined that one academic was too few, but three out of sixteen was not proven as too few. The Judge also noted that outstanding administrative issues at a campus may alter the appropriate balance.

- 2) *Conflict of Interest Policy.* This bill prohibits visiting team members, officers, and employees from having actual or an appearance of a conflict of interest. A conflict of interest may include prior or current affiliation with the institution under review, paid service to the institution under review, or having a near relative serving in a capacity for the college or for the ACCJC. The federal criteria for recognition also prohibit conflicts of interest and require agencies to have "clear and effective controls against" actual or the appearance of conflicts of interest. ACCJC's current policy regarding conflicts of interest appears to comply with the definition contained in this bill.

This bill requires agency decision-makers and staff to annually file a form identifying all sources of earnings derived from the field of education, from entities that perform services for any CCC, or from lobbying regarding any CCC. It is not clear where this form is intended to be filed or who will be reviewing the form.

Additionally, as currently drafted, it is unclear if this would prohibit the CCCCCO from maintaining a Commission seat on the ACCJC, as the CCCCCO often provides services, support, and lobbying on behalf of CCCs.

- 3) *Public meetings and voting.* This bill requires public access to, and public comment at, agency meetings. According to ACCJC's letter of opposition to this bill, these requirements "would lengthen and make a public spectacle of the meetings" as well as "interject public opinion into the decisions." ACCJC is concerned that such requirements would place the commission in violation of USDE requirements. However, federal criteria for recognition specifically require an agency to "provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or pre-accreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both."

This bill requires agency decision-making to occur in public, and be recorded in meeting minutes and posted on the agency's website. It is unclear if this provision is intended to require public deliberations or only public voting. Committee staff was unable to find another accrediting agency that requires either public deliberations or public voting regarding accreditation decisions. Public deliberations and voting requirements may have consequences for the peer-review and improvement nature of the accreditation process.

- 4) *Accordance with state/federal standards.* This bill requires an agency to establish standards in accordance with state and federal laws, and to "afford appropriate deference to" institutional activities that are "consistent with the requirements of state law." It is unclear what this provision is intended to accomplish and whether compliance with this provision could violate federal requirements. Federal "criteria for recognition" require that agencies develop and base decisions on accreditation standards that cover an array of student success and institutional administrative and fiscal stability criteria.
- 5) *Due Process.* This bill contains a variety of requirements surrounding due process and the ability of an institution under review to receive and comment/correct visiting committee reports prior to agency action. Federal criteria for recognition, and ACCJC's policies, also establish an array of due process requirements. Several of the requirements of this bill are

consistent with federal requirements and (recently revised) ACCJC policies. This bill, however, also requires visiting team *recommendations* to be shared with the institution under review. Committee staff was unable to identify another accrediting agency that currently requires the visiting team recommendation to be provided to the institution. For example, WASC-Sr. policies specifically provide that the team recommendation is *confidential* to the Commission prior to decision-making.

- 6) *Appeals Process.* The appeals process outlined in this bill is inconsistent and potentially conflicts with two provisions of federal criteria for recognition. This bill contains a requirement that the appeals panel reviewing agency decisions be appointed by the CCC Chancellor. This requirement appears in direct conflict to federal criteria that expressly prohibit outside organizations from playing a role in making or ratifying accreditation decisions. This bill authorizes the appeal panel to consider new or additional evidence. This requirement is inconsistent with the criteria for recognition that establish a very narrow requirement for new evidence related only to institutional financial stability.

Related legislation.

AB 404 (Chiu) was approved by this committee on April 7, 2015, and requires the CCC BOG to conduct a survey of the CCC, including faculty and classified personnel, to develop a report to be transmitted to the USDE that reflects a systemwide evaluation of the agency based on criteria used to determine an accreditor's status.

AB 1385 (Ting) is pending in the Assembly Higher Education Committee. This bill prohibits the accrediting agency for CCCs from imposing a special assessment on CCCs for legal fees for any lawsuit, unless there has been an affirmative vote of the majority of the chief executive officers, or their designees, of all of the CCCs.

Prior legislation.

AB 1942 (Bonta), Chapter 382, Statutes of 2014, required the CCC BOG, in determining if a CCC district satisfies the minimum conditions for receipt of apportionment funding, to review the accreditation status of the CCCs within that district; required the accrediting agency for CCCs to report to the appropriate policy and budget subcommittees of the Legislature upon the issuance of a decision that affects the accreditation status of a CCC and, on a biannual basis, any accreditation policy changes that affect the accreditation process or status for a CCC; and, required the CCCCCO to ensure that the appropriate policy and budget subcommittees are provided the aforementioned required information.

AB 2247 (Williams), Chapter 388, Statutes of 2014, required all campuses serving California students of public and private postsecondary educational institutions that receive state or federal financial aid funding to post institutional accreditation documents on the institution's website.

SB 1068 (Beall) of 2014, which was held in the Senate Appropriations Committee, would have required CCC BOG, by January 1, 2016, to report on the feasibility of creating an independent accrediting agency to accredit the CCCs and other 2-year private postsecondary educational institutions, and to make recommendations relative to CCC accreditation.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers (Sponsor)
California Labor Federation
California Teachers Association

Opposition

Accrediting Commission for Community and Junior Colleges
Community College League of California

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