



April 6, 2015

VIA EMAIL, FACSIMILE, AND U.S. MAIL

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Teresa Dreyfuss, Superintendent/President
Rio Hondo College
3600 Workman Mill Road
Whittier, CA 90601

Re: *ACCJC's Letter Citing Deficiency in Faculty Evaluations and District's
Request to Negotiate SLOs*

Dear Superintendent Dreyfuss:

This office represents Rio Hondo College Faculty Association, CTA/NEA ("RHCFA" or "Association") in the above-referenced matter. The February 6, 2015 letter from Barbara A. Beno, President of the Accrediting Commission for Community and Junior Colleges ("ACCJC"), states:

In order to meet standards, the team recommends all evaluations for faculty and others directly responsible for student progress toward achieving stated student learning outcomes have, as a component of their evaluation, effectiveness in producing those learning outcomes. (III.A.1.c).

The team report notes that not all faculty and "others directly responsible for student progress toward achieving stated student learning outcomes" have SLOs as a component of their evaluation. The tenured faculty evaluation process does not include SLOs as a component of the process and participation by part time faculty is optional.

The Standard requires that it be a component for all evaluations, including the evaluations of part time and tenured faculty. Additionally it is noted that the current process utilized by the College does not address the effectiveness of those being evaluated in producing those learning outcomes. The College's current requirement of participation only in the SLO assessment process is insufficient to meet the requirements of the Standard.

I am informed that, after receiving the ACCJC's letter, the District requested a meeting with the Association to negotiate the subject of student learning outcomes ("SLOs"), presumably as they relate to the faculty evaluation process. While RHCFA initially scheduled a meeting with the District for April 9, 2015, upon further consideration and as explained below, RHCFA

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submits that it has no obligation to bargain over SLOs at this time and is hereby canceling the April 9 meeting.

First, the zipper clause in the parties' existing Collective Bargaining Agreement ("CBA") acts as a bar to any negotiations during the term of the agreement. Article 19 of the parties' CBA provides, in relevant part:

- 19.1 This Agreement shall constitute the full and complete commitment between both parties. This Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary mutual consent of the parties and a written and signed amendment to this Agreement.
- 19.2 **During the term of this Agreement, the parties expressly waive and relinquish the right to bargain collectively on any matter**, whether or not specifically referred to or covered in this Agreement even though not within the knowledge or contemplation of either party at the time of negotiation and even though during negotiations the matters were proposed and later withdrawn.
- 19.3 It is understood and agreed that the specific provisions contained in this Agreement shall prevail over Board Policy, College Procedures, and State laws to the extent permitted by State law, and that in the absence of specific provisions of this Agreement, Board Policy and College Procedures shall prevail.

A union may rely upon the zipper clause to refuse to negotiate a mid-contract change in contract language at the employer's request. See *Inglewood Unified Sch. Dist.*, PERB Dec. No. 2290 (2012); *Los Rios Cmty. College District*, PERB Dec. No. 684 (1988); *Fountain Valley Elem. Sch. Dist.*, PERB Dec. No. 625 (1987). Here, based on the zipper clause in Article 19, the parties expressly waived and relinquished the right to bargain during the contract term. Therefore, the Association has no duty to bargain over SLOs in evaluation during the term of the current CBA.

Second, "regardless of the existence of a zipper clause, neither party to a collective bargaining agreement has a duty to negotiate over any matter covered by the agreement during its term (subject, of course, to reopener provisions)." See *Inglewood Unified Sch. Dist.*, PERB Dec. No. 2290 (2012) citing *Los Rios Cmty. College District*, PERB Dec. No. 684 (1988) (internal citations omitted). Here, the parties' CBA not only covers evaluations, but the parties negotiated a specific agreement on "Student Learning Outcomes" and their use in evaluations on May 16, 2014. For this reason, too, RHCFA is not required to negotiate the use of SLOs in faculty evaluation in response to the District's request.

Moreover, a zipper clause does not allow an employer to make unilateral changes in policy affecting terms and conditions of employment. Under the Educational Employment Relations Act ("EERA"), Cal. Gov't Code section 3543.2(a), evaluation procedures are expressly

within the scope of representation and are therefore a mandatory subject of bargaining. Moreover, the California Public Employment Relations Board (“PERB”) has long interpreted the evaluation procedures clause in section 3543.2(a) broadly. For instance, in *Compton Community College District*, PERB Dec. No. 798 (1990), PERB found that the use of student complaints to assess employees’ performance in evaluations was an evaluation procedure and could not be unilaterally imposed.

Furthermore, the California Education Code recognizes that faculty evaluation procedures and tenure evaluation procedures may be subject to negotiation as part of the collective bargaining process. *See* Cal. Educ. Code §§ 87663(e); 87610.1(a).

In support of its recommendation, the ACCJC relies upon its own promulgated accreditation standards. There is no question that the requirements of California law take precedence over ACCJC’s accreditation standards. But the prescriptive language in ACCJC’s accreditation standards results in improper statements like those in Ms. Beno’s February 6, 2015 letter that ignore California law and PERB caselaw.

Indeed, even the ACCJC has changed the accreditation standard from the one it seeks Rio Hondo to implement. Standard III.A.1.c was part of the ACCJC’s Accreditation Standards adopted in June 2002, and then provided: “Faculty and others directly responsible for student progress toward achieving stated student learning outcomes, have, as a component of their evaluation, **effectiveness in producing those learning outcomes.**” However, the ACCJC’s Accreditation Standards adopted in June 2014 deleted that language and replaced it with the following: “The evaluation of faculty, academic administrators, and other personnel directly responsible for student learning includes, as a component of that evaluation, **consideration of how these employees use the results of the assessment of learning outcomes to improve teaching and learning.**” *See* Exhibit A (ACCJC’s Accreditation Standard III, Adopted June 2014, available at http://www.accjc.org/wp-content/uploads/2014/07/Accreditation_Standards_Adopted_June_2014.pdf).¹

¹ The ACCJC’s revised 2014 standard no longer appears to require “effectiveness in producing student learning outcomes” as an evaluation component but rather recommends evaluation based on how faculty use the results of SLO assessments to improve teaching and learning. Under the agreement reached between the District and the RHCFA in May 2014, faculty are now “responsible for entering Student Learning Outcomes (SLO) assessment data, and engaging in dialogue and writing assessment reports with other faculty for one semester each academic year” and “Faculty evaluations may be based, in part, on whether a unit member provides assessment data.” *See* Tentative Agreement Signed on May 2014 Between the Association and the District regarding SLOs. The May 2014 agreement between the parties already is consistent with the ACCJC’s revised standard.

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The District may not implement the ACCJC's February 6, 2015 Recommendation No. 7 to mandate that a component of faculty evaluation and tenure evaluation include effectiveness in producing SLOs. Any changes to evaluation procedures must be negotiated with RHCFA. As discussed, during the term of the current CBA, RHCFA has no duty to bargain the inclusion of SLOs in the faculty evaluation process. If the District nonetheless responds to the ACCJC's recommendation by making unilateral changes in evaluation or tenure review procedures, the Association will have no choice but to file an unfair practice charge against the District at PERB to preserve collective bargaining rights. Moreover, in the unlikely event that the ACCJC sanctions the District for failure to implement Recommendation No. 7 in a way that would require action in conflict with the parties' CBA and/or May 2014 Agreement regarding SLOs, the Association will seek all available relief, including but not limited to bringing a court action against the ACCJC and/or the Western Association of Schools and Colleges alleging interference with contract.

Please confirm in writing, not later than the close of business on April 13, 2015, to the undersigned or to CTA Regional UniServ Staff Robin Devitt that the District will follow the Agreement regarding SLOs reached between the parties in May 2014 and will not unilaterally impose effectiveness in producing SLOs as a component of the faculty evaluation process. Thank you for your anticipated cooperation.

Very truly yours,



Richa Amar, CTA Staff Counsel
Attorney for Rio Hondo College Faculty Association,
CTA/NEA

RA:fm
Attachment

cc: Barbara A. Beno, ACCJC President (*by mail*)
Robin Devitt, CTA Regional UniServ Staff (*by email*)
Lynette Nyaggah, CCA President (*by email*)

EXHIBIT A

Accreditation Standards

(Adopted June 2014)

Introduction¹

The primary purpose of an ACCJC-accredited institution is to foster student learning and student achievement. An effective institution ensures that its resources, programs, and services, whenever, wherever, and however delivered, support student learning and achievement. The effective institution ensures academic quality and continuous improvement through ongoing assessment of learning and achievement and pursues institutional excellence and improvement through ongoing, integrated planning and evaluation.

There are four Standards that work together to define and promote student success, academic quality, institutional integrity, and excellence. The mission provides a framework for all institutional goals and activities. The institution provides the means for students to learn and achieve their goals, assesses how well learning is occurring, and strives to improve learning and achievement through ongoing, systematic, and integrated evaluation and planning (Standard I). Student learning programs and support services make possible the academic quality that supports student success (Standard II). Human, physical, technology, and financial resources enable these programs and services to function and improve (Standard III). Ethical and effective leadership throughout the organization guides the accomplishment of the mission and supports institutional effectiveness and improvement (Standard IV). Integrating the elements of the Standards gives institutions the means to develop a comprehensive assessment of academic quality, institutional integrity and effectiveness, and a path to continuous improvement.

Standard I: Mission, Academic Quality and Institutional Effectiveness, and Integrity

The institution demonstrates strong commitment to a mission that emphasizes student learning and student achievement. Using analysis of quantitative and qualitative data, the institution continuously and systematically evaluates, plans, implements, and improves the quality of its educational programs and services. The institution demonstrates integrity in all policies, actions, and communication. The administration, faculty, staff, and governing board members act honestly, ethically, and fairly in the performance of their duties.

A. Mission

1. The mission describes the institution's broad educational purposes, its intended student population, the types of degrees and other credentials it offers, and its commitment to student learning and student achievement. (ER 6)

¹ The Introduction section and opening paragraphs of each Standard are not intended for citation as standards. They are introductory in nature only.

Standard III: Resources

The institution effectively uses its human, physical, technology, and financial resources to achieve its mission and to improve academic quality and institutional effectiveness. Accredited colleges in multi-college systems may be organized so that responsibility for resources, allocation of resources, and planning rests with the district/system. In such cases, the district/system is responsible for meeting the Standards, and an evaluation of its performance is reflected in the accredited status of the institution(s).

A. Human Resources

1. The institution assures the integrity and quality of its programs and services by employing administrators, faculty and staff who are qualified by appropriate education, training, and experience to provide and support these programs and services. Criteria, qualifications, and procedures for selection of personnel are clearly and publicly stated and address the needs of the institution in serving its student population. Job descriptions are directly related to institutional mission and goals and accurately reflect position duties, responsibilities, and authority.
2. Faculty qualifications include knowledge of the subject matter and requisite skills for the service to be performed. Factors of qualification include appropriate degrees, professional experience, discipline expertise, level of assignment, teaching skills, scholarly activities, and potential to contribute to the mission of the institution. Faculty job descriptions include development and review of curriculum as well as assessment of learning. (ER 14)
3. Administrators and other employees responsible for educational programs and services possess qualifications necessary to perform duties required to sustain institutional effectiveness and academic quality.
4. Required degrees held by faculty, administrators and other employees are from institutions accredited by recognized U.S. accrediting agencies. Degrees from non-U.S. institutions are recognized only if equivalence has been established.
5. The institution assures the effectiveness of its human resources by evaluating all personnel systematically and at stated intervals. The institution establishes written criteria for evaluating all personnel, including performance of assigned duties and participation in institutional responsibilities and other activities appropriate to their expertise. Evaluation processes seek to assess effectiveness of personnel and encourage improvement. Actions taken following evaluations are formal, timely, and documented.
6. The evaluation of faculty, academic administrators, and other personnel directly responsible for student learning includes, as a component of that evaluation, consideration of how these employees use the results of the assessment of learning outcomes to improve teaching and learning.
7. The institution maintains a sufficient number of qualified faculty, which includes full time faculty and may include part time and adjunct faculty, to assure the fulfillment of faculty responsibilities essential to the quality of educational programs and services to achieve institutional mission and purposes. (ER 14)

8. An institution with part time and adjunct faculty has employment policies and practices which provide for their orientation, oversight, evaluation, and professional development. The institution provides opportunities for integration of part time and adjunct faculty into the life of the institution.
9. The institution has a sufficient number of staff with appropriate qualifications to support the effective educational, technological, physical, and administrative operations of the institution. (ER 8)
10. The institution maintains a sufficient number of administrators with appropriate preparation and expertise to provide continuity and effective administrative leadership and services that support the institution's mission and purposes. (ER 8)
11. The institution establishes, publishes, and adheres to written personnel policies and procedures that are available for information and review. Such policies and procedures are fair and equitably and consistently administered.
12. Through its policies and practices, the institution creates and maintains appropriate programs, practices, and services that support its diverse personnel. The institution regularly assesses its record in employment equity and diversity consistent with its mission.
13. The institution upholds a written code of professional ethics for all of its personnel, including consequences for violation.
14. The institution plans for and provides all personnel with appropriate opportunities for continued professional development, consistent with the institutional mission and based on evolving pedagogy, technology, and learning needs. The institution systematically evaluates professional development programs and uses the results of these evaluations as the basis for improvement.
15. The institution makes provision for the security and confidentiality of personnel records. Each employee has access to his/her personnel records in accordance with law.

B. Physical Resources

1. The institution assures safe and sufficient physical resources at all locations where it offers courses, programs, and learning support services. They are constructed and maintained to assure access, safety, security, and a healthful learning and working environment.
2. The institution plans, acquires or builds, maintains, and upgrades or replaces its physical resources, including facilities, equipment, land, and other assets, in a manner that assures effective utilization and the continuing quality necessary to support its programs and services and achieve its mission.
3. To assure the feasibility and effectiveness of physical resources in supporting institutional programs and services, the institution plans and evaluates its facilities and equipment on a regular basis, taking utilization and other relevant data into account.