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UNION NEWS

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SPECIAL UPDATE OF THE UNION NEWS

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THE SHRINKING FREE SPEECH RIGHTS OF CALIFORNIA COMMUNITY COLLEGE FACULTY

By Robert Perrone

What if I told you that you have more free speech rights in Arden Fair Mall than on many community college campuses in California? Don't laugh; it's true. Up and down the state, trustees in community college districts (among them Allan Hancock, Antelope Valley, Citrus, Fullerton, Glendale, Mt. San Antonio, State Center, San Francisco and Ventura) are approving new policies that declare District colleges are "non-public forums," except for designated "Free Speech" areas. In some of these districts, those "free speech" areas are gazebos or other such limited spaces.

The language of these policies is explicit. "The colleges of the district are non-public forums" appears in virtually all the policies. Those policies give district administrators the right to

decide who, when and where people speak. One, San Francisco Community College District, requires someone who wants to make an impromptu speech to register two weeks in advance. At Allan Hancock, anyone wishing to speak must present a brief written statement of what will be said.

Community college trustees have received tacit encouragement in this trend toward limiting the free speech rights of faculty by a 2006 U.S. Supreme Court decision, *Garcetti et al v. Ceballos*. In a 5-to-4 decision authored by Justice Anthony Kennedy, the Court held that speech by a public official is only protected if it is engaged in as a private citizen, not if it is expressed as part of the official's public duties. Although Ceballos was an employee of the

Los Angeles District Attorney's office, some District courts have begun applying the decision to faculty. The question before the Court was whether a public employee's job-related speech, expressed solely within the context of his/her employment, is protected by the First Amendment simply because it touched on a matter of public concern, or must that speech also be engaged in as a citizen? Justice Kennedy wrote in his opinion, "The fact that his duties sometimes required him to speak or write does not mean his supervisors were prohibited from evaluating his performance."

This decision can and has been used to muzzle faculty criticism of governing board policies and campus governance issues. ■

FACULTY WILL NOT ERODE THEIR LEGAL RIGHTS

Joint Statements of the Academic Senates
San Diego City, Mesa, and Miramar Colleges and
the American Federation of Teachers Guild, Local 1931

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Statement on SLOs:

Academic Freedom is a bedrock principle in higher education, as has been recognized and embraced by the Academic Senate for the California Community Colleges, the AFT Guild, and the San Diego Community College District.

In acknowledging both the core value of academic freedom and that faculty are the subject matter experts in their fields of expertise, the American Association of Community and Junior Colleges (AACJC) concedes that Student Learning Outcomes (SLOs) assessment must be faculty driven. This AACJC approach to SLOs as faculty driven has been written into policies on assessment adopted by the colleges through their respective shared governance procedures.

While, from the beginning, many of us have objected to the very notion of SLO assessment on principle, we have cooperated with initial discussion and planning, recognizing the political realities we face and the hammer of accreditation. Now, as the process has become clearer, we have come to see that our skepticism has been well-founded.

Accordingly, the Academic Senates of San Diego City, Mesa, and Miramar Colleges join with the AFT Guild in affirming the following positions:

1. Any attempt to impose standardized definitions of success or assessment outcomes violates academic freedom;
2. In the initial discussion and implementation of student learning objectives and outcomes assessment, the purpose of said assessment was to evaluate student learning and, if necessary, address pedagogical or curricular concerns; hence, all initiatives to change the purposes of said assessment, without full agreement among all stakeholders, represents a breach of the faculty's good faith. It follows, accordingly, that no program funding shall be tied to SLO data and reporting;
3. Workload issues arising from implementation of SLO data collection and reporting are substantive and have not been resolved through the collective bargaining process. The diversion of re-

sources associated with any linkage of SLOs to program funding also is subject to collective bargaining and shared governance decision-making processes. Initiatives by some administrators to mandate SLO assessment implementation by fiat, outside of the collective bargaining process and without full consent of shared governance stakeholders, are not only illegal, but represent bad faith negotiations by the District;

4. AB 1725 and the state's Education Employment Relations Act preclude the linkage of faculty evaluation to extraneous data, including SLOs. By extension, any decision to fund or defund departments and/or programs, on the basis of SLO data and reports, would breach the separation of SLO assessment and faculty evaluation as mandated by statute and the collective bargaining agreement.

There is a link between the faculty's upholding the principle of academic freedom and resisting administrative attempts to violate contractual provisions on workload. In the face of some administrative strategies to move SLO assessment beyond the realm of pedagogy to program evaluation and resource allocation, we recommend that faculty decline to perform tasks that erode their rights, as established in law and the collective bargaining agreement. Specifically, we advise that faculty not participate in any activities which;

1. Increase the workload of the individual faculty member;
2. Impact the evaluation of faculty and/or their programs;
3. Affect the allocation of resources in such a way that the terms and conditions of the faculty member's employment are changed in any manner.

If an accrediting body chooses to put the accreditation of any college or continuing education center at risk based on the accrediting agency's insistence that the college or continuing education center violate the law or the collective bargaining agreement in order to secure its accreditation, the AFT Guild and the California Federation of Teachers will seek legal redress in court. ■

FACULTY CONTINUE TO CONFRONT THE BUDGET CRISIS

By Robert Perrone

I want to follow up on how faculty in other districts are confronting the budget crisis

I'll only focus here on what I see as the most innovative approach by a faculty union to address the impact of budget cuts. That local union is the San Francisco Community College District Federation of Teachers, AFT Local 2121.

Local 2121 has adopted innovative approaches to the task of reducing assignments, raising funds and raising public awareness of the depth of the crisis facing community colleges.

Through consultation between the Local and the district's chancellor, priorities for cutting assignments were agreed upon. Assignments for retirees returning as adjunct faculty and full-time overload assignments were reduced first. This will be followed by reduction in assignments to adjunct faculty without preference.

The SFCCD administration is not filling any vacant administrative positions. Additionally, top administrators took a 6% pay cut for 2009-10 and the chancellor voluntarily reduced his salary by 25%.

In the area of fundraising, the Local actually held a garage sale that raised \$12,000. While that is not much, the sale was meant more as an awareness-raising event. There has also been an effort to raise funds for classes scheduled to be cut. That effort consists of a campaign for private donations to "buy" a class. The Local determined that \$6,000 was needed to prevent a class from being cut. Donors need not contribute \$6,000, but some have. No sponsorships are permitted, that is, a donor doesn't get to have his/her name or the name of a company attached to a class, such as the Shell Oil Class in Geology. Donors get to choose the discipline but not the specific course to which they will donate. The donations are tax deductible. The campaign has been fairly successful so far in restoring some classes that were on the chopping block. ■

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NEW STATE INITIATIVE WOULD REDUCE OR ELIMINATE RETIREMENT BENEFITS

By Robert Perrone

The California Foundation for Fiscal Responsibility has submitted an initiative to the Office of the Attorney General which, if it qualifies for the ballot and is approved by voters, would change benefits for new public employees covered by the CalPERS and CalSTRS defined benefit programs.

One section of the initiative specifies that "members must work at least five consecutive years of full-time employment to receive retirement benefits." This would eliminate STRS retirement benefits for the overwhelming majority of part-time community college faculty hired after

December 31, 2010. STRS now estimates that over half the part-time community college faculty are members of its defined benefit program.

Additionally, the maximum benefit paid to all new STRS members (hired after December 31, 2010) and who are not in Social Security, would be 1.65% of the average of the highest three consecutive years of base wages per years of employment. Additionally, the initiative would limit the maximum retirement benefit of STRS retirees to "75% of the employee's annual average base wage." That 75% maximum would require about 45 years

of service. All other earnings, including overload, according to the proposed initiative,, "shall be excluded from calculating the annual average base wage."

The initiative does no limit benefits for current public employees nor does it limit disability or survivor benefits.

(Carolyn Widener, a member of the CalSTRS Board and a member of AFT Local 1521, provided much of the information for this article) ■