

Board of Trustees
Resolution on Internal Governance
June 27, 2017

Whereas, the Board of Trustees recognizes that the probationary status imposed upon the College's accreditation by the Middle States Commission is a deterrent to the effective delivery of academic programs and full attainment of the College's potential, and

Whereas, the probationary status of the College's accreditation will hinder service to the very constituency—the students—service to which forms the central mission of the institution, and

Whereas, the probationary status of the College's accreditation imposes upon the institution a stigma that suppresses an accurate public perception of the College, and

Whereas, until the Middle States Commission standards are met and the probationary status removed, the College cannot advance as it should for the benefit of its students and the public it serves, and

Whereas, the administrative and organizational disruption experienced by the College over recent years evinces underlying structural traits that will continue to hinder future effective functioning if not corrected, and

Whereas, the Board of Trustees, in recognition of its responsibility to provide policy leadership for the College, is compelled to take measures to ensure that the College meets the Middle States Commission's standards of accreditation as well as address issues that may deter the College's advancement,

NOW THEREFORE BE IT RESOLVED, that the Board directs the President of the College as described in Nassau Community College Board of Trustees Rules of Procedure (Policy 1200) and in New York State Regulations (8NYCRR 604.3), to undertake the establishment of a system of shared governance, with due consideration of the important role of the faculty in the administration and advancement of the College, while recognizing the genesis of the College's Academic Senate contained in Article 20 of the labor agreement between the College and the Nassau Community College Federation of Teachers, and

BE IT FURTHER RESOLVED that upon identifying best practices in shared governance, the President shall establish a system of internal governance ensuring faculty participation in governance required by 8 NYCRR 605.1 that shall fully comport with the aforementioned Middle States Commission's Standards 4 and 5, and

BE IT FURTHER RESOLVED that the Board declares that the Academic Senate Bylaws are not legally binding on the Board and the Board possesses authority to promulgate alternate procedures and mechanisms to ensure appropriate faculty participation in governance, as required by law, Board policy, and regulation, and

BE IT FURTHER RESOLVED that the President is directed to present to the Board on or before September 1, 2017 the aforesaid system of internal governance for the purpose of consultation with faculty on those aspects of institutional functioning as required by state statute, regulation and Board policy, and in accord with the advisory role of the faculty to the extent described in Section 20 of the labor agreement between the College and the Nassau Community College Federation of Teachers.

**Background and Context:
Resolution on Internal Governance
June 27, 2017**

Disruption of the governance and administrative functioning of the College during recent years was brought into sharper focus by two visiting teams of evaluators representing the institution's accrediting agency, the Middle States Commission (MSC). The reports by the MSC teams, in April and November 2016, determined that the College does not meet the standards for accreditation in the areas of Leadership and Governance (Standard 4) and Administration (Standard 5).

While the Board and the College have taken actions and set in place mechanisms to resolve most of the deficiencies identified by the evaluators, the following excerpts from the reports identify problems with governance that remain unresolved:

“Stemming from interviews, and following a review of the NCCFT faculty contract, the Academic Senate Bylaws, SUNY regulations, and College Policy, the team feels that the interpretation of these documents, now and over the past decade, serves as the source of confusion leading to the negative climate that now exists,” (April 2016, p.12)

“A review of documentation, and confirmed in interviews with administrators, faculty, the Board of Trustees, the President, the President's Cabinet, the Academic Senate Executive Committee and students that the Academic Senate, through its 27 committees, is the driving entity for a large array of policy decisions,” (April 2016, p.12)

“This section of the NCCFT contract (Section 20) and the Academic Senate Bylaws appear to conflict with Article II: Procedure of the Academic Senate Bylaws,” (April 2016, p.13)

“These statements (from Article II of the Academic Senate Bylaws), along with the complex process for Presidential veto and Academic Senate veto override have coalesced to form a difficult process for effective and efficient policy making decisions to occur on campus,” (April 2016, p.13)

“The College must complete a formal review of the roles & responsibilities and authority of all constituencies and staff of the College, including but not limited to issues of policy creation/revision, policy final approvals, and policy implementation. The results of this review must be clearly communicated to all constituencies of the college,” (April 2016, p.14)

“While Board Policy 1200 has been approved, at the time of this visit it has yet to be fully operationalized. The College must continue to move forward, with each constituency group embracing their roles and responsibilities as outlined,” (November 2016, p.10)

“The College must provide evidence of adequate information and decision-making systems to support the work of administrative leaders,” (November 2016, p.11),

These passages and charges from the MSC visiting teams' reports refer to the formal basis of governance, and to organizational documents within the College, including the Board of Trustees policies, collective bargaining agreement and the Bylaws of the Academic Senate. A particular point of concern in the MSC directives to the College is to define the “. . . roles & responsibilities and authority of all constituencies and staff of the College.”

Governance of community colleges, and the roles of the Board of Trustees, the President and faculty, are contained in New York State Education Law 6306 and New York State Education Regulations (8 NYCRR sections 600-605).

The “Responsibilities and duties of the college trustees” are defined in 8 NYCRR 604.2. In conformance with this section of regulations, the Board of Trustees at its meeting of October 2016 adopted revisions and updates of its Bylaws, contained in the “Board Policy 1200, Rules of Procedure.” This action constituted the first step in response to the above quoted findings of the MSC. In pertinent part, 8 NYCRR 604.2 states: *“The college trustees shall establish policies and delegate to the president or designee responsibility for implementing...”* a range of policies as stated in the regulation. The MSC evaluation team of last fall referred to the Board’s revisions: *“While Board Policy 1200 has been approved, at the time of this visit it has yet to be fully operationalized. The College must continue to move forward, with each constituency group embracing their roles and responsibilities as outlined,”* (November 2016, p.10)

The “Responsibilities and duties of the president” are articulated in 8 NYCRR 604.3. Pertinent here to only the governance issue under consideration, the regulations state: *“The president will perform the following duties: formulate and present to the college trustees, for their action, recommendations on . . . curriculum,”* and *“assure the preparation of a faculty handbook in which the role of the faculty in the administration and advancement of the college is described (see also section 605.1 of this Subchapter).”* In its revision in October 2016 of Board policy 1200 “Rules of Procedure,” the Board included verbatim section 8 NYCRR section 604.3 defining the role of the President.

State regulations also describe the role of faculty as follows: *“605.1. Faculty Role. The faculty shall participate in the formulation of the policy relating to student health, scholarship, standards of admission, attendance and discharge of students, curriculum and other study programs, the granting of degrees, student activities, extra-curricular activities and student discipline. The faculty shall also present recommendations to the president regarding (a) the instructional budget, and (b) appointments, reappointments, tenure, special salary increments, promotions and leaves of absence of members of the instructional staff.”* The Board incorporated this passage verbatim into its revised Board policy 1200, “Rules of Procedure” in October 2016.

In their reports on governance and administration, preceding the adoption of Board policy 1200, the April and November 2016 MSC evaluation teams clearly discerned that the College’s existing structure and practice of governance did not conform to the formal statutes as described above.

The Middle States Commission on Higher Education’s “Characteristics of Excellence” describes the traits of a *“well-defined system of collegial governance including written policies outlining governance responsibilities of administration and faculty and made readily available to the campus community,”* (MSC “Characteristics of Excellence,” p.15). The MSC policy further states that the institutions must *“assign authority and accountability for policy development and decision making, including a process for the involvement of appropriate institutional constituencies in policy development and decision making,”* and devise fundamental elements of administration that provide *“adequate information and decision-making systems to support the work of administrative leaders.”* The visiting MSC evaluators did not find the College’s governance system to comply with the accreditation standards.

A widely accepted policy statement on faculty role in governance is found in the American Association of University Professors’ (AAUP) “Policy Documents and Reports.” This document describes the role of faculty as follows:

“The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final

decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.”

A central point of contention at NCC regards the question whether the faculty holds unequivocally the authority to make policy. This view, set forth in current Academic Senate Bylaws which are not binding on the College, is clearly contradicted by State law and regulation, by collective bargaining agreement, by the AAUP’s long-standing policy as stated above, and does not meet the standard of governance for accreditation.

The history of faculty governance at NCC has its origins in the NCC Federation of Teachers agreement, Section 20, appearing in various constructions in the earliest labor agreements in the 1970s and retained in some respect in all versions up to the present. Section 20 of the NCCFT agreement contains provisions that establish the entity known as the Academic Senate and also contain expressions of the right of the Senate to participate in—but not control—governance. Independent of this labor contract’s expression of an advisory governance role for the faculty qua Senate, the Senate on its own enacted Bylaws illegally usurping the College President and Board of Trustees’ sole authority to govern the institution to the extent criticized by the MSC reports.

A portion of the 1976-78 NCCFT agreement establishing a rather byzantine “veto” authority of the Senate was subsequently removed from the 1979 NCCFT labor agreement but retained as a Senate bylaw, as Article II. This Article II bylaw was specifically referred to by the April 2016 MSC evaluation team (page 16) of its report as “*a difficult process for effective and efficient policy making decisions to occur on campus.*” (See full quote above)

The evolution over the decades of the existing Senate Bylaws has led to incorporation of numerous passages into the document, including in various committee descriptions, that violate legal and regulatory authority assigned to the Board of Trustees as the governing body of the institution, and to the President of the College as delegated to that office by the Board of Trustees.

The Academic Senate Bylaws do not constitute a legal nor formal basis for policy making within the College, as discussed herein. However, State Education regulations require that faculty be assured a consultative role—and in fact assign a responsibility (“shall participate”) to faculty for consultation on aspects of institutional operation: “*The faculty shall participate in the formulation of the policy relating to...*” (8NYCRR 605.1) Effective shared governance within institutions of higher education depends upon a system of consultation and recognition of the advisory faculty role in policy formation.

During the 2016-17 academic year the President and senior administrators worked extensively with a group of faculty leaders to conform the Academic Senate Bylaws to both respond to the MSC requirements for meeting accreditation standards and to institute a form of governance that would serve the College over the coming years. The latter stages of that work produced the first step of a reform in the Academic Senate Bylaws, proposed by the Task Force on Governance Review. The Academic Senate approved the revised Bylaws by a majority vote. However, although attaining a simple majority vote of the membership of the Senate, the revision failed to reach the required two-thirds majority of the voting membership for passage according to the Bylaws. There is thus no simplistic modification of the Bylaws that will meet the MSC standards for accreditation, that conforms to statute and regulations, and that reflect accepted higher education governance organization. The College is left with no alternative to meet the requirements of the Middle States Commission to preserve the College’s accreditation than that expressed in the Board of Trustees resolution of June 27, 2017.