

February 21, 2018

TO: Dr. Keith Humphrey, Vice President Student Affairs  
California Polytechnic State University  
San Luis Obispo, California 93407

FR: Jim Larson, National President  
Delta Sigma Phi

RE: Formal Request of Appeal

Dear Keith,

First of all, thank you and Dr. McMahon for the opportunity to meet face-to-face on Friday, January 19, 2018. Not only was this a great opportunity to learn and glean new information from both of you, but it was also an opportunity for our organization to clarify information and formulate our appeal to you. I appreciate that you have an incredibly busy schedule, which makes your taking the time to sit with us and talk all the more valuable.

As you shared in our meeting, formal appeals and requests are done so through your office. Given certain conflicting information that we took away from our meeting, we would like to make an appeal directly to you at this time; to regain University recognition on the Cal Poly campus.

The Purposes of this letter are as follows:

1. To clarify the reasons for, and the facts that reinforce, our belief that our chapter has complied with expectations set forth by Cal Poly for re-recognition by University.
2. To obtain a specific set of directions, expectations and timetable required by the University that ensures our readmission to the Cal Poly Greek community at the earliest opportunity.
3. To officially request that your office thoughtfully conduct a fully informed review of:
  - a. The circumstances leading to our loss of recognition
  - b. The confusing and misleading directions the University authored and provided to the chapter over their period of isolation, and
  - c. The tremendous work done by this group of students and alumni to ensure the Chapter's behavior has been a model which all Cal Poly Greek organizations should operate.

**Current Understanding of Terms:**

Before addressing our specific grounds for appeal, I want to clarify our understanding of the terms for returning to campus recognition that have been specified by Cal Poly. As we understand the terms, they are as follows:

- Full cessation of all fraternity activities whether on-campus or off-campus, including recruitment (*note: directly following our meeting with your office, all recruitment activities of the chapter have been suspended*)

- After the full cessation of operations, the chapter will be able to return to redevelop and be recognized as of August 2019
- Recognition will require an affirmative vote of the IFC
- The administration is not inclined to provide a letter of return guaranteeing the opportunity for the chapter to redevelop unless approved by the IFC.

### **Requested Terms:**

Our request, per this appeal, is for Cal Poly to amend the terms suggested during our January meeting to the following:

- Full cessation of all activities whether on-campus or off-campus as quickly as possible following closure of the appeals process
- Following a complete cessation of activities, the chapter will be able to return to recognition and redevelop in August of 2018
- The administration will provide a letter of return guaranteeing the opportunity for the chapter to redevelop in August of 2018, provided the conditions of cessation are met
- A commitment that the right to return to campus will not be contingent upon the approval of IFC.

### **EXECUTIVE SUMMARY OF APPEAL**

Following is an overview of our justification for the amended terms. In brief summary, the rationale is supported by the following considerations:

- As documented in the attached email chain, Delta Sigma Phi operated in good faith under the understanding (articulated by the University) that recruiting and operating off-campus would not jeopardize recognition.
- Despite assertions by the University that we would be made aware of any concerns related to our potential recognition, we were never provided any indication that recognition was in jeopardy until Dr. McMahon's letter in May of 2017. Since that time, we have attempted to engage the University in dialogue related to this sanction.
- Delta Sigma Phi has operated according to the University's directives as clarified to us, and has had no health and safety violations for 3 ½ years (and has instituted significant measure to prevent against such).
- While the initial rationale for loss of recognition was a concern for student health and safety, the rationale for an extended period now appears to be related to the University's concern of liability, and as stated by Dr. McMahon, an aversion by some in the IFC to positively consider our return.
- Given the demonstrated history of the chapter over the last 3 ½ years, that liability concern seems unfounded, remote at best, and logically in contradiction with the university's continuing recognition of other chapters who have recent health and safety conduct violations.
- While significantly disconcerting to the existing membership, we will cease operations immediately through August in deference to the now understood position of the University; however, we do not understand where there is any compelling rationale for an additional, punitive, extrajudicial extension of the loss of recognition imposed on a group of men who have exhibited high character, contribution, and merit and none of whom were engaged in

either the original event that caused the suspension, or any health and safety violations from that time forward.

### **Rationale for Appeal:**

#### **Clarification of Understanding of Original Terms:**

On January 19, we discussed direction we received from the University which appeared to clarify for us that continued operations off campus would not undermine our opportunity to return to recognition. We were informed that day that (a) any such communication would only have been meant to address our constitutional rights; and (b) that there was no unclear or conflicting communication from the University.

*“No one ever said those things”* (related to the conflicting information we had from Mr. Mockford), and *“That simply isn’t the case. There certainly isn’t anything in writing to suggest that we were providing conflicting information.”* – Dr. McMahon

It is important to review the full and honest accounting of conversations we have documented on this matter. The full chain of conversations clarifies how we arrived at our understanding, and why our chapter has continued to operate off campus (**and has done so under the explicit and implicit direction of the University, with an understanding that such engagement would not impact recognition**).

The email exchange between Delta Sigma Phi and Cal Poly is attached. I ask your indulgence and pray that you reread these communications to appreciate the clearly conflicting information provided to our organization.

In retrospect, and after speaking in more detail with both of you in regard to the leadership transition in that respective office, Dr. McMahon’s lack of comprehension of the miscommunication is understandable, given the fact that all of the previous Cal Poly leadership team involved in this communication chain, (save for Mr. Mockford) are former members of staff at Cal Poly.

Please do not take this as criticism, only factual information that assists in gaining a better understanding of the entire picture. We were relying on communications and clarifications from the Dean’s office. Given the information we received, we believed that we were within the boundaries of cessation.

For clarity, the following summarizes the communication, our understanding of expectations, and the intervening actions between the fall of 2015 and now:

- Mr. Mockford clarified specifically that: (a) students are not restricted from joining Delta Sigma Phi; and (b) that **recruiting off-campus would not affect rejoining the university**
- This position was reinforced by Dr. Rohrbacher, stating the safest way to avoid violating recruitment restriction was to stay off campus. He provided examples of permissive and non-permissive recruiting (implicitly reinforcing that we would not violate the loss of recognition expectations by recruiting off campus).

- A follow-up email was provided by Mr. Mockford noting some amount of confusion as to his initial directives, stating that the “greatest opportunity to regain recognition” was to cease all operations, including off campus activity.
  - We sought clarification, due to the contradiction with original directives.
  - Further leadership in the administration was made aware of the confusion, and it was clear that Mr. Mockford was assessing our request for clarification and seeking a final answer.
  - **Mr. Mockford’s final clarification, as to recognition, reverts the conversation to the original intent (that future recognition concerns were only related to on-campus engagement / use of the Cal Poly name; not off-campus operations).**
- Mr. Mockford also articulated (copying the Dean, and Director of Fraternity & Sorority Life) his authority to provide such direction, and that we should **only** engage him to avoid any confusion (**reinforcing our reliance on his authority, and the implicit affirmation of such authority by the Dean of Students**).
- Mr. Mockford also explicitly stated that he would, as often as possible, **alert the national Fraternity and chapter of any concerns where conduct could be approaching or crossing a line** (in relation to recognition status).
- In the intervening time, the interactions with the University and the chapter were limited to the following:
  - A few early concerns addressed the chapter’s use of Cal Poly trademarks in relation to recruitment; each of which were remedied immediately, and the conduct office commended the swift action (and in one case determined there was no conduct concern at all).
  - A alumni sponsored scholarship for general non-Greek students was addressed. Upon review, the University concurred the activity was not related to the undergraduate chapter and was not a conduct concern.
  - There was **one instance** addressing an alleged behavioral conduct concern, noting reports of an underage student allegedly drinking at the chapter’s facility. The investigation determined that there was no such activity, and **the chapter was absolved of any wrongdoing.**
  - In each conversation, the University noted its interest in reengaging the chapter as a recognized partner, and **never once suggested** there was a concern that **our initial timeline was in jeopardy.**
- Of equal importance is what **did not** occur during the intervening time:
  - Despite University attention to trade mark concerns, the chapter **NEVER once violated any health and safety conduct policy.**
    - We take issue with the assertion of spurious claims that there were other conduct issues that were never brought to the attention of the chapter or the national Fraternity. In response to our request as to why issues were not addressed or investigated for veracity, we have heard repeatedly from Dr. McMahon that the University is not inclined to invest resources on investigating health and safety conduct concerns of unrecognized organizations. This appears particularly incredulous given that the University in fact was willing to invest resources into investigating other, less pressing concerns (and in fact did investigate one health and safety concern that resulted in the Chapter’s exoneration).

- Despite assertions that we would be alerted of any concerns of conduct approaching or crossing a line impacting recognition, not once were we given such warning. The first time we were notified of any such concerns was in a letter from Dr. McMahon this past May, alerting Patrick Jessee, our Executive Director, that the University would withhold recognition until all chapter operations completely ceased for two years.

In Summary:

- The University explicitly gave us direction that operating off campus would not impact our future recognition.
- The university promised to alert us to any concerns whereupon we may have been endangering such future recognition.
- Our chapter operated within the confines of the expectations, as we understood them, based on the direction of the University.
- The University explicitly reinforced that we were engaging appropriately through conversations with chapter leadership when any issues arose by commending our engagement and proactively noting that there was interest in returning to a partnership of recognition.
- The University implicitly reinforced that we were engaging appropriately by not once providing warning that any actions were endangering future recognition (after being told such notice would be given as often as possible).
- **Given the above, until the letter from Dr. McMahon this past May, the University either willfully or negligently allowed us to operate for more than two years in a manner it did not approve of without ever giving us notice of that discord. In fact, its' actions reinforced the opposite.**

#### Operational Track Record during Loss of Recognition

It is important to reiterate (as you have seen in other submissions) that our chapter has engaged as an exceptional citizen of the San Luis Obispo community (through exceptional GPAs, community service, significant philanthropy, safe behavior training and alumni leadership) and has been cited by the SLO Police Department and other organizations including Aware Awake Alive as having a health and safety track record rivaling the best Fraternities on the Cal Poly campus. The chapter's last health and safety incident was the initial incident in the summer of 2014.

#### University Rationale for Loss of Recognition

In the fall of 2015, recognition was revoked for two years, citing a **concern for health & safety of the student body**. The chapter has operated with an exceptional and enviable track record with respect to health and safety concerns for more than 3 ½ years. Despite the chapter overwhelmingly addressing, correcting, and exhibiting an exemplary record with respect to the University's initial underlying concern, the University seeks impose a new sanction on the chapter.

It is not a sanction on health and safety related conduct of the men who comprise the existing chapter (men who were in high school when the initial conduct occurred, men who have engaged in an exceptional manner and in accordance with what was originally clarified and consistently reinforced by the University). The new sanction is being imposed based on a concern that the

University will expose itself to unacceptable liability for recognizing a group of men because they have not complied with revisionist expectations of the University.

### Addressing the University's Concerns Related to Liability

Given the University's rationale for not granting a return sooner than fall 2019 being its concern for liability, it is important for us to address this concern directly.

The position stated by your office is that the University cannot accept an earlier return, because were an incident to occur with the chapter in the future, there would be overwhelming risk of liability to the institution. The University's concern is that it would be exposing itself to liability for allowing a chapter to exist with its recognition that had not complied with a directive it was provided; and as such, the University would have a heightened duty with respect to the group.

To be clear, the "violation" for which the University suggests a liability concern exists, is a failure to cease regular functions of association (membership recruitment and operations) – **not any conduct for which the University would in any way be put on notice of potential threat to the health and safety of the student body.** Furthermore, there was no willing violation of this recruitment directive, as the chapter understood that they were operating within the confines of the University's directive. Even more, the chapter has had **no intervening health and safety conduct violations for 3 ½ years;** the deficiencies that led to the health and safety issue that was the immediate concern for closure were swiftly remediated and processes were put in place to improve health and safety standards; and there have been significant and continued support systems developed from a harm reduction & harm prevention standpoint that are likely more substantial than most if not all active fraternity chapters at Cal Poly today.

The concern of increased liability due to a chapter's non-compliance with an unclear directive regarding a non-health & safety related issue is even more confusing and lacking in foundation when you consider the current realities of the active recognized fraternity chapters on campus. On one hand, Delta Sigma Phi has operated without a health & safety incident for 3 ½ years. On the other hand, in that intervening time, numerous fraternity chapters have violated **actual** health and safety directives of the university, yet they maintain their recognition to date. Fraternity chapters have been sanctioned for alcohol, sexual assault, and hazing related incidents that have all occurred between the summer of 2014 and today, **including an event that resulted in the stabbing of two Cal Poly students.** Yet the argument is made that recognizing a Delta Sigma Phi chapter that safely continued recruiting, operating, contributing positively to the community, earning exceptional academic marks, and avoiding such health and safety violations is somehow more of a liability to the University than it is for the University to continue recognition of groups that have recently been found responsible for these concerns. If we are being honest, that logic simply does not stand up. The University has exceptionally bright lawyers; and I would hope each of them would admit that they would rather defend against the University's liability for a theoretical future loss from a Delta Sigma Phi related event, than they would any one of the other fraternities with significant and more recent conduct concerns acted upon by University.

### **In Conclusion**

Therefore, we ask you to consider the following:

Isn't the chapter's recognition preferable to dissolution when that chapter's parent organization and governing alumni strongly reinforce the University's goals for student health, safety, well-being, academic achievement, socially responsible conduct, leadership development, respect for others and their views, and community service? And when they have acted within the highest standards of conduct and behavioral expectations, isn't it an ideal opportunity to allow them to re-enter the Cal Poly community as an example of a highly effective representative of the University's Greek system.

When considering the restrictions that we have already complied with (consistent with the University's clarification), isn't the concept of community service and education-to-responsibilities, instead of dissolution, a preferable teaching method for a responsive organization, and more in-line with the University's "Learn By Doing" philosophy?

Because we want to be collaborative, and establish and model a partnership with the University, our appeal at this time is to remove the 16 month cessation mandate from our men, allow a deferential period of cessation until the fall of 2018, and develop a group mindset for moving forward. Our men have already, as per your request at our meeting of 1/19/18, ceased recruiting. We continue to monitor, discuss and work with the undergrads, alumni and National HQ for an acceptable resolve, and respect the current status of cessation.

Please honor our appeal, and put us all back at the table to move forward for the betterment of all.

Respectfully, and inter-fraternally yours,

A handwritten signature in black ink, appearing to read "J. W. Larson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James W. Larson  
National President  
Delta Sigma Phi  
Cal Poly Graduate 1975