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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

AFT LOCAL 2121 ON BEHALF OF ITSELF AND ITS MEMBERS, CALIFORNIA FEDERATION OF TEACHERS, SHANELL WILLIAMS, KIMBERLY M. GINTHER-WEBSTER, BIE HAN TAN, AUGUSTA GOLDSTEIN, TWANICA PEACOCK, RACHEL COHEN, ADRIANA GUTIERREZ, BROOKE DAWSON, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, Plaintiffs, vs. ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES; and DOES 1 through 50, inclusive, Defendants.	Case No. **CLASS ACTION COMPLAINT FOR INJUNCTIVE RELIEF FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

SUMMARY OF THE CASE

1. For 50 years, City College of San Francisco has continuously been accredited to provide affordable higher education to thousands of San Francisco residents, many of whom are low income, recent immigrants, and returning veterans. City College trains these students for 140 vocations, such as law enforcement, firefighting, nursing, culinary, paralegal, and mechanics, for more than 60 academic degrees, and for more than 200 credit and non-credit programs,. City College prepares many students for further academic study at four-year universities, provides lifelong learning for older adults, and educates immigrants to English as a Second Language. It assists a variety of special populations, from military veterans to disabled students.

2. City College now employs about 1, 500 experienced instructors to teach almost 80,000 students. It is the largest community college in California, and the only community college within San Francisco. Statistics prove it to be one of California's most successful community colleges.

3. All this will end next summer, unless this Court grants the relief requested in this Complaint.

4. Defendant Accrediting Commission for Community and Junior Colleges ("ACCJC") has ordered that the City College shall be disaccredited. Because California law requires all community colleges to be accredited, and federal law cuts off federal funds to colleges that have been disaccredited, this will cause City College to stop providing education to the San Francisco community on July 31, 2014. This even though education is a Constitutional right in California, and the Legislature has determined that every county shall have a community college. ACCJC's decision will leave California's fourth largest city without one.

5. This Complaint alleges that ACCJC's decree, and its underlying actions leading to this decree, constitutes an unfair and unlawful business practice, in violation of California Business & Professions Code §17200. The Complaint seeks a preliminary injunction to prevent the decree from closing City College this summer by restoring the status quo before the ACCJC decree.

6. ACCJC's dispute with City College harks back to 2006, when ACCJC issued a report that spoke very highly of City College. But then came the recession. ACCJC's agenda was to press the community colleges to cut back on their mission to provide open access to all students. Many colleges

succumbed to this pressure, but City College resisted, because the residents, and the college's constituencies including its trustees, students, faculty and leadership, supported California's landmark Master Plan for Higher Education. This plan specifies that community colleges shall have open enrollment, affording all residents an opportunity for a college education. So ACCJC President Barbara Beno lobbied California legislators and state administrators to narrow the mission. The recent decree to close City College is ACCJC's effort to send a message that colleges should conform to ACCJC's agenda, and to accomplish through accreditation what it could not accomplish by lobbying.

7. But ACCJC violated California law, federal regulations, and its own policies and procedures, in arriving at its decision to issue this decree. These violations, which invalidate the disaccreditation decree, include these, among others:

* ACCJC is required to appoint an independent evaluation team. Instead, ACCJC President Beno appointed her own husband to the 2012 team as the hatchet man, a man who had predetermined to disaccredit City College before he even conducted the evaluation. In 2013, she appointed her Vice President, along with a trustee of a trust fund that CCSF was ordered to pay into, by the 2012 and 2013 evaluation teams, and Beno.

* ACCJC is required to appoint an evaluation team consisting of a balance of administrators and faculty peers. Instead, Ms. Beno appointed a team in 2012 with 17 members, just one a teacher. In 2013, the 9 person team had just one faculty member. Under Beno's leadership, ACCJC teams give administrators, who represent just 3 % of the colleges employees, 75% of the seats on the teams.

* ACCJC's decree was based on a finding that City College had failed to cure deficiencies identified in past ACCJC reviews of City College, in 2006, 2007, 2009 and 2010. This was false. Past ACCJC reviews had identified no City College failures to meet accreditation standards.

* The current review found no deficiencies in any of City College's 140 vocational programs or its hundreds of academic programs.

* While the 2013 evaluation team found 19 violations of ACCJC's non-academic standards, ACCJC's Commission raised this to 30 violations. ACCJC's rules allow this only when ACCJC first gives the college written notice, an opportunity to respond to the new charges in writing, and postpone the ACCJC decision until its next regular meeting, 6 months hence (i.e. in January 2014). But ACCJC

failed to do so.

* ACCJC's decree was based in part on ACCJC "team reports" and Beno’s letters, criticizing City College for not paying money into the prefunded retiree health benefits trust (CCLC JPA). A founder of the trust, and one of its trustees, Steven Kinsella, is the Vice Chair of the ACCJC; another trustee of the fund, Frank Gornick, is a commissioner; many of the ACCJC’s team leaders and members are trustees of the trust; and the trust’s founder Kinsella is especially responsible for ACCJC’s using prefunding as an indicator of whether a college should be sanctioned.

* ACCJC failed to follow basic due process procedures, including a failure to provide findings of fact that justified its death penalty verdict, and Standards that fail to take into account California law on education as a constitutional right, and the impact of any failings of a college - when they are legitimate ones - on academic quality.

* ACCJC normally gives a warning or probation to colleges that allegedly violate its Standards for the first time. Disaccrediting a first-time offender is Draconian and unsupported by the evidence, and the result of the many conflicts of interest and other unfair and unlawful practices alleged.

* Most of ACCJC’s standards and criteria are not required by the U.S. Department of Education. ACCJC applied these standards of its own creation, even though they do not measure the academic quality of institutions, and they are arbitrary, capricious and unreasonable, and disrespect the public policy, laws and Constitution of California. ACCJC decrees rely on its conclusion that CCSF did not meet several of these unlawful, unfair and sometimes unwritten standards. ACCJC found CCSF deficient because, *inter alia*, individual board members expressed their opinions on matters of public concern to their constituents, the board did not “speak as one,” because of dissent by students, faculty and even the public from the views of some of CCSF’s new leadership and the ACCJC, and because of criticism of ACCJC.

* Usually, ACCJC affords a college two years or more to correct real deficiencies. ACCJC’s president confides that she has had “wiggle room” to give colleges time. ACCJC gave CCSF just 9 and 1/2 months to “satisfy” the Commission - a futile task as ACCJC had long before made up its mind to punish CCSF.

8. The U.S. Department of Education ("USDE") accredits the accrediting agencies,

including ACCJC. On August 13, 2013, USDE ruled that ACCJC had violated several USDE regulations in its review of City College. But USDE's only remedy is to disaccredit ACCJC (which USDE is now considering), and not to rescind ACCJC's decree shutting down City College.

9. In July, the California Community College system installed a trustee to run City College, removing the elected school board. That trustee is allied with ACCJC and will not challenge its decree; his boss, the State Chancellor, was a member of the Commission for 6 years, and has been a confidante of ACCJC president Beno during the events alleged herein. They will not challenge ACCJC over its unlawful and unfair practices, placing their hope on the goodwill of ACCJC and their internal "request for review" which they have refused to make public on the advice of ACCJC.

10. Plaintiffs are a combination of faculty, students, residents, the faculty union and its parent, the California Federation of Teachers. Together they bring this action on behalf of everyone similarly situated - the 80,000 students whose education hangs by a thread, the 1,500 faculty and hundreds of classified employees about to be laid off, and the residents of San Francisco, about to lose their only community college, and dash the hopes of the thousands of high school students and others for an education from City College of San Francisco, an education which brings with it the promise of jobs.

This lawsuit seeks to preserve the heritage of a San Francisco institution, the only access that thousands of present and future San Francisco residents have to higher education, and the open access mission foreseen by a generation of Californians who valued affording California residents this opportunity.

INTRODUCTION

11. City College of San Francisco is the only public community college within the City and County of San Francisco, and the second largest community college in California, serving a population of more than 850,000 residents. Its main campus and eight smaller campuses educated nearly 90,000 students in 2011.

12. City College of San Francisco ("CCSF") offers a wide range of academic, career education (vocational), non-credit and other programs to serve the City's diverse population. It's academic program is among the highest ranked on California's community colleges based on objective statistics. CCSF is a bridge to four year colleges for a large percentage of the City's high school

students, many of whom enter CCSF with the intention to transfer to a four year college. CCSF students who desire to advance to a degree at a four-year college or university, such as the California State University system ("CSU"), have a better chance of success if they attend CCSF, than nearly 90% of the other public community colleges. CCSF's vocational programs are regularly lauded as among the most effective anywhere. It's non-credit program educates immigrants so they can speak English, and offers mind-developing instruction to life-long learners. Since its creation, CCSF has educated hundreds of thousands of San Francisco residents, and given many thousands a bridge to a four year degree, or other higher education.

13. CCSF, like all of California's community colleges, is required by California law, to be "accredited" by the Accrediting Commission for Community and Junior Colleges ("ACCJC"), as set forth in 5 Cal. Code Regs. § 51016. The ACCJC is a private, non-governmental entity, and a separate "Commission" within the Western Association of Schools and Colleges. ACCJC accredits public community colleges in California, Hawaii and islands of the Western Pacific. CCSF has been continuously accredited by the ACCJC since 1952. In accordance with the ACCJC's usual accreditation evaluation cycle, every six years ACCJC has evaluated CCSF and before 2012, the ACCJC always granted it re-accreditation. Unlike two-thirds of California's community colleges, CCSF had never been "sanctioned" by the ACCJC for any deficiencies. That is, until "Show Cause" was announced on July 2, 2012. It was this sanction which led directly to ACCJC's decision to disaccredit CCSF, which the ACCJC announced on July 3, 2013.

14. Despite its excellence, an experienced and talented faculty, and the support of the citizens of San Francisco, CCSF must cease operations as of July 31, 2014, as a result of the ACCJC's decision to disaccredit the college.

15. Disaccreditation of CCSF will be devastating to the students of City College, prospective students, and the residents of San Francisco. As many as 80,000 current CCSF students will have their college education interrupted or prematurely ended. Because CCSF is the only public community college in San Francisco, there is no equivalent alternative within the City and County of San Francisco. Closure of CCSF will mean that these students, future students, and the residents of San Francisco will be denied their Constitutional right under California law to attend a local, public community college,

within the boundaries of their own community.

16. Admission of these students to a neighboring community college is not available for most of these students, given a number of factors. These include enrollment limitations at community colleges in neighboring counties, the lack of equivalent programs, transportation issues, family obligations, and limited financial resources. For many students, who are on low incomes, or who juggle childcare, familial, or work obligations, neighboring colleges are simply too far away. Many students are attending CCSF not merely because of its overall quality, convenience and cost savings; rather, it offers them the specific education they want, whether a particular career through its extensive vocational training programs, a bridge to a four-year degree, skills to assist with disabilities or economic disadvantages, language and other skills to help in living within a new culture with a different language, or life-long learning.

a) Students who are already attending CCSF as a bridge to a CSU, UC or another college, but have not completed the requisite units, will be left in the lurch by disaccreditation.

b) Recent immigrants and older adults who depend on CCSF for necessary skills training or "lifelong learning" will be cut off from a college education.

c) Private colleges in San Francisco or nearby counties are not an equivalent, available alternative. Apart from the logistics of gaining entry, the cost of private colleges is enormous compared to CCSF. CCSF's student population will not be able to assume the financial burden of private colleges. In California's community colleges, classes cost a mere $46 per unit. For UC students, the cost per unit for a student taking 15 units per semester is approximately $440, for CSU that cost is approximately $234, and private colleges are around $1070. (The UC and CSU systems charge a flat rate of tuition for full-time enrollment. This number reflects the cost per unit given that a "full-time student" is taking 15 credit hours per semester; Data for private college tuition retrieved from: https://secure.californiacolleges.edu/finance/how-much-does-college-cost.asp - last accessed September 3, 2013. The U.S. Department of Education's College Affordability and Transparency Center Report on Public 2-year Higher Educational Institutions with the Lowest Tuition is essentially an uninterrupted list of California's Community Colleges. (This report can be accessed by requesting the data set "Public, 2 Year" and "Lowest Tuition", available at: http://collegecost.ed.gov/catc/Default.aspx#; last accessed

September 16, 2013.) For those students that attend community colleges for two years before obtaining their Bachelor's degree, their cost of education can be cut dramatically, while simultaneously increasing educational opportunities and job prospects for the future.

17. The ACCJC's disaccreditation decision has led to the takeover of the College by the State Community Colleges Board of Governors, which has displaced the elected school board and appointed a State trustee who is not accountable to the citizens of San Francisco. The trustee has recently terminated the long-standing project to build a Performing Arts Center for CCSF, despite the expenditure of $20 million appropriated by the citizens of San Francisco.

18. Closure of CCSF will decimate accomplished academic departments and exemplary vocational training programs, which benefit not just the students themselves, but the County. CCSF offers some 125 credit and 84 noncredit certificates of achievement, certificates of accomplishment and awards, as well as 66 associate degree programs to area residents. It also offers nearly 140 vocational programs, which provide trained personnel to serve business and governmental agencies in San Francisco, and throughout the Bay Area. Each term it graduates paramedics who go to work in the San Francisco Fire Department; its paralegal/legal studies students satisfy the needs of the local legal community; its aircraft mechanic graduates work at the Airport, servicing the airplanes of carriers based there; its computer science graduates support tech companies located in San Francisco; its RN and LVN program graduates staff San Francisco's hospitals, clinics, and convalescent homes; its numerous trained medical personnel - from radiologic technicians to physical therapists and dental assistants - care for San Franciscans. Every year, these vocational programs provide thousands of graduates for Bay Area employers, satisfying the needs of San Francisco. The potential economic losses to San Francisco, its businesses and citizens, are staggering, and could amount to millions of dollars for years to come. And delays in their education will cost these students chances that exist now, or in the near future, to be hired; they will also cost these students future earnings; and, delays in their future employment can mean they lag in wages for years to come.

19. ACCJC ordered CCSF to adopt a "closure policy" consistent with ACCJC policy. (available at: www.ccsffoward.com/our-progress/key-documents/ ; last accessed September 15, 2013). It is hardly surprising, given the obstacles identified above, that ACCJC's "Policy on Closing an

Institution" offers virtually nothing to assist students in coping with the devastating impact of disaccreditation.

a. Under ACCJC's "closure" policy, for a student who "has completed 75% of an academic degree or an educational program in the "closing" institution, and who "chooses to continue at another institution", arrangements "shall be made to permit the student to complete their education elsewhere, but with a degree from CCSF." "These steps normally require the institution to continue as a legal organization for 12 to 18 months beyond the closing date, ..." But there is no guarantee that nearby colleges offer the requisite programs, or have sufficient openings to include CCSF students, that students can get to the college given the location, or their other obligation, or their financial condition.

20. ACCJC's "Closing Policy" offers virtually nothing to assist the vast majority of CCSF students, who have not completed 75% of an academic degree or program. Students with less than 75% little more than a letter "indicating the closure" of the college, and a statement that the closing college must make sure their transcripts are up-to-date. Beyond that, they are on their own. A Report issued by the San Francisco Budget and Legislative Analyst on September 18, 2013 found that "CCSF Students Have Limited Options for Attending Other Colleges or Programs." (Report, p. 7) The Analyst found that while "many CCSF students enroll in courses that can be transferred to the [CSU], [UC] or other four year colleges, ... these students may not have sufficient credits or meet the minimum qualifications to transfer to a State University." The Report detailed the dismal fate which confronts these students,

> "Students who do qualify for transfer may not be able to find a place in a local State University or in a program provided by a local State University. San Jose State University is 'impacted', meaning it has more qualified student applications than available spaces. San Francisco State University and California State University East Bay have available spaces but several programs are impacted ... 10.5 percent of CCSF student enrollment in Spring 2013 were in programs that they could not access at San Francisco State University or California State University East Bay because the programs were either impacted or not offered."

Currently enrolled students therefore face an uncertain and threatening future which will likely see the plans and hopes of many ended.

21. For CCSF faculty, the effects of disaccreditation are also devastating. CCSF employs more than 2,500 employees, including approximately 1,500 faculty represented by PLAINTIFF AFT LOCAL 2121, who will lose their jobs as a result of disaccreditation and closure. In Fall 2012, between 16 and 18 part-time academic counselors were already let go. The CCSF "closure plan," which ACCJC

required it to prepare, provides that the faculty as a whole will be given layoff notices in March 2014, or earlier. Consistent with ACCJC policy, the college "cannot make any guarantees to future employment ..." It is supposed to "assist them in good faith" in "finding alternative employment." (See CCSF Closure Policy, at: http://ccsfforward.com/ccsf-show-cause-and-closure-report/ (last accessed Sept. 15, 2013) But available alternative employment is highly unlikely. Due to the recession, Bay Area colleges have cut back over the last five years, laying off hundreds of part-time, adjunct faculty, and not replacing all the full-time faculty who have left. Job openings are relatively few and when they appear, attract large numbers of applicants. ACCJC's president, Barbara Beno bluntly announced in February of 2012, at a public meeting held in Eureka, CA, to an audience of another college (Redwoods) which was then facing the prospect of disaccreditation at the hands of ACCJC, that if a California community college is closed the ACCJC will not allow it to be "taken over" and run by another community college which continues to employ the same workforce. As she put it, the faculty would receive unemployment, and a chance to *apply* for work with any "successor" college.

22. All of CCSF's faculty have already suffered severe pay cuts resulting from ACCJC's Show Cause sanction, and now disaccreditation, diminishing faculty pay, in the aggregate, by almost $10 million over the current and last academic year. Faculty who found jobs at CCSF and anticipated working there until retirement age, will be dismissed, and with dismissal will no longer have jobs where the employer contributes 8.25% of income into the CalSTRS retirement system for their retirement.

23. Student enrollment at CCSF has dropped dramatically, almost certainly costing the college millions of dollars in future revenue. CCSF's reputation has been smeared. CCSF has been denigrated in the press, even on a national basis, potentially dimming the employment prospects of those expected to graduate in 2013- 2014. Despite objective statistics proving its excellence, CCSF, its constituencies, and the People of San Francisco have been harmed, and face more harm in the future. Further evidence of harm to the students, employees and residents is alleged below.

24. In addition to the harm already suffered, and additional, imminent harm, the City and County of San Francisco, and its residents, face enormous losses. According to the San Francisco Budget and Legislative Analyst, CCSF generates over $300 million in economic activity for the City's economy every year. It is an "indispensable engine of opportunity."

25. The harm arising from ACCJC's action from disaccreditation directly interferes in the Constitutional and statutory rights of the students, and the residents of San Francisco, to fulfill their educational goals. Education is a Constitutional right of the residents of California, the residents of San Francisco, and the students who are currently enrolled at CCSF. ACCJC's Standards, and its application and implementation of those Standards completely disregarded these rights. As unthinkable as closing CCSF is simply based on its educational success and its special role in San Francisco, ACCJC's actions toward CCSF from its evaluation of CCSF in 2012 to the present, are riven by flagrant and pervasive violations of Federal regulations, ACCJC's own policies, and California law. These reprehensible actions, alleged with particularity herein, constitute unfair and unlawful business practices under California Business and Professions Code section 17200 *et seq.*

26. CCSF's disaccreditation, and the earlier Show Cause sanction, would not have happened, except for these numerous unfair and unlawful business practices in connection with ACCJC's evaluation of CCSF, in violation of California Business and Professions Code section 17200 *et seq*. These practices include, but are not limited to, ACCJC's numerous conflicts of interest which directly affected ACCJC's evaluations of CCSF in 2012 and 2013, its failure to comply with its published procedures, its repeated deviation from Federal regulatory requirements, its reliance on Standards which are not widely accepted, its implementation of criteria which are not clear and published, its mischaracterization of prior ACCJC actions regarding CCSF, its failure to provide CCSF with detailed specifications of alleged deficiencies, its failure to afford CCSF proper notice and an opportunity to be heard as to certain alleged deficiencies, its violation of basic due process requirements of California's common law procedure doctrine, and its reliance on accreditation standards which are both invalid on their face, and as applied. When ACCJC's deficiencies are considered in light of CCSF's superior academic quality and the horrific impacts on CCSF, its students and employees, and the residents of San Francisco, it becomes apparent that ACCJC acted unlawfully and unfairly in disaccrediting the College. Plaintiffs meet the legal requirements for an injunction to restore CCSF's accredited status, and to assure CCSF is not closed.

PARTIES

27. PLAINTIFF AFT LOCAL 2121 ("LOCAL 2121") is located in San Francisco, CA, and

has been certified by the California Public Employment Relations Board, pursuant to the Educational Employment Relations Act (Cal. Gov't. Code § 3540 *et seq*.), as the exclusive bargaining representative of a bargaining unit of nearly 1,500 academic employees employed by CCSF within the County of San Francisco. LOCAL 2121 is suing both in its individual capacity and on behalf of all of its members.

a. LOCAL 2121 has negotiated a series of collective bargaining agreements since the late 1970s, governing the wages, hours and employment conditions of the employees it represents. Many of these employees have earned deferred compensation, in the form of retiree health benefits. But unless they retire from CCSF, they will not receive this benefit, and unless CCSF continues to operate, they cannot satisfy this condition.

b. LOCAL 2121 incurs costs and expenses for its representation of its members, and charges its members dues. LOCAL 2121 and its members have already suffered a loss of money and property, arising out of the Show Cause and Disaccreditation decisions of the ACCJC.

c. Approximately 16-18 part-time academic counselors represented by LOCAL 2121 were laid off by the District in or about Fall and Winter 2012, due to the Show Cause sanction issued by the ACCJC, and CCSF's efforts to satisfy the requirements of the Commission for CCSF to be reaccredited. Each of these individuals lost money (wages and benefits) as a result of their layoffs. They also lost the continuing accrual of property: service credits and future contributions by the CCSF to their retirement compensation through the California State Teachers Retirement System, to which they belong.

d. This layoff of the aforementioned counselors reduced the dues monies received monthly by LOCAL 2121. These dues are used, in part, to finance the LOCAL 2121 challenge to the pay cuts imposed on the faculty, to attempt to negotiate resolution of pending disputes over pay, and to bring this and other actions against the unlawful and unfair practices of the ACCJC.

e. The entire remaining Union membership, about 1,500 academic employees, face the imminent loss of their employment, their benefits which cover them and their families, loss of pay, and loss of opportunities to continue to earn future retirement compensation and receive retiree health benefits. The layoff of these employees therefore will cost them a loss of money and property, and will cause LOCAL 2121 further losses of dues money.

f. The District, in response to ACCJC's Show Cause sanction, and arising out of ACCJC's assertion that CCSF spent too much of its budget (92%) on employee compensation (of which about 60% was the result of academic employees represented by LOCAL 2121), unilaterally reduced the compensation of the employees represented by LOCAL 2121, in violation of the collective bargaining agreement between LOCAL 2121 and the District. (ACCJC applies an "underground" regulation that colleges should spend no more than 83 percent of their general fund budget on employee compensation, alleged more fully below.) In or about December 2012, the District imposed a 4.4% annualized, retroactive wage cut for the 2012-2013 school year, and subsequently a 5% wage cut starting July 1, 2013 for the 2013-2014 school year. As a result of these unilateral wage cuts, unit members suffered a loss of pay. In addition, LOCAL 2121 lost dues money from these reductions since the Union dues they pay is determined as a percentage of wages.

g. LOCAL 2121 filed two grievances over these two District's unilateral wage reductions, which have not been resolved. The grievances are proceeding to arbitration. LOCAL 2121 also filed an unfair labor practice charge with the California Public Employment Relations Board, which has since been deferred to the same arbitration. LOCAL 2121 has incurred legal fees, expenses and other monetary costs as a result of these reductions in pay and the Union's efforts to enforce its agreement through the grievances, arbitration and unfair labor practice charges. As a further result of this unilateral action by the District, LOCAL 2121 met with the District in negotiations and attempted to resolve this dispute, but those efforts have been unsuccessful. Thus far the losses to LOCAL 2121 as a result of the District's response to Show Cause, and Disaccreditation, exceed $50,000.

h. Because the District refuses to fully defend itself from ACCJC's unlawful and unfair Show Cause sanction, and later disaccreditation, LOCAL 2121 and the CALIFORNIA FEDERATION OF TEACHERS, have incurred costs and expenses, including legal fees, in challenging these sanctions. Both of these Plaintiffs filed a Complaint against the ACCJC's actions with the U.S. Department of Education and the ACCJC, on April 30, 2013. Since April 30, 2013, LOCAL 2121 and the CFT have filed additional complaints with the US Department of Education. These complaints have led to costs which in the aggregate exceed $100,000. LOCAL 2121 and CFT are pursuing this case to enjoin the unfair and unlawful business practices of the ACCJC, for which they will incur additional costs.

28. PLAINTIFF LOCAL 2121 is afforded the right, under Government Code section 3543.8, to institute and prosecute any action or proceeding in its own name, as representative and on behalf of its members. LOCAL 2121 brings this action on its own behalf, and as representative on behalf of all of its members, including those already laid off by the District. LOCAL 2121 also prosecutes this action in accordance with Business and Professions Code section 17200, *et seq*. Apart from its representative status, LOCAL 2121 has suffered an injury in fact, and a loss of money and property as alleged herein.

29. Plaintiff the CALIFORNIA FEDERATION OF TEACHERS ("CFT") is the parent organization of LOCAL 2121, and of more than 25 other locals unions which represent approximately 25, 000 California community college academic employees in bargaining units recognized under the EERA. CFT has also suffered an injury in fact, and a loss of money and property as a result of the Show Cause and Disaccreditation decisions, because of the District's layoff of faculty represented by AFT 2121, because it charges dues to LOCAL 2121 based on the number of union members it represents. The layoff of academic employees in Fall 2012 led to a reduction in LOCAL 2121's payments to the CFT, and hence a loss of money to CFT. CFT faces the imminent loss of additional dues as a result of the layoffs, which will result from CCSF's closure.

30. PLAINTIFF SHANELL WILLIAMS is 29 years old. She grew up in San Francisco, is a resident of the City and County of San Francisco and has been a City College student for three years. She is an urban studies major. Ms. Williams hopes to complete her CCSF education in the Spring semester of 2014, and aspires to transfer to UC Berkeley. She is considering a career as a lawyer. Williams has been able to maintain her full-time student status through participation in the Guardian Scholars program at City College, a unique program, possibly the only one of its kind, that offers extensive services to students exiting the foster care system. Without this program at CCSF Williams would not be in a position of eligibility to transfer to a 4 year institution. Denial of accreditation leaves her, and her fellow residents of San Francisco, without a local community college, to which she and they are entitled by California law, and threatens the imminent loss of her Constitutional right to a higher education. Williams has been active in student government, serving as vice president and president of the Associated Students. She was elected by the students as the Student Trustee of the College's Board

of Trustees in April, 2013, for a one-year term. In this position she represents CCSF's students. As student trustee she had extensive responsibilities including attending governing board meetings, and serving as a member of the search committee for a new chancellor. She was one of the lead organizers with the Save CCSF Coalition which sought to maintain access and affordability of CCSF for all students; organized Student Sit In and March 14 Rally at City Hall; and addressed the State Board of Governors at their meeting on January 9, 2012, opposing the "Student Success Task Force." She has served on CCSF Accreditation workgroups and was a member of the Participatory Governance Council for the college. Williams helped organize the CCSF International Student Solidarity Forum with student leaders from Chile, Puerto Rico, Mexico and Canada, and the Diversity Rally and screenings of "Precious Knowledge" to protect ethnic, women and LGBTQ studies. She also testified in Sacramento for education and was student speaker this year for the "March in March". The student trustee is paid a monthly stipend of $500 by CCSF. Williams began receiving this stipend after she was elected, but once CCSF was disaccredited, the State Trustee ceased paying her the stipend and unilaterally removed her as student trustee. She has not been paid the stipend for the last three months. Williams was informed by State Trustee Agrella by email on July 11, 2013, that she was removed from the Chancellor's Search Committee. Two other student representatives were not removed. Williams was led to believe she was removed because she had expressed opposition to disaccreditation and to the actions of the ACCJC. When Williams attempted to attend a meeting of the search committee, she was barred from entering by CCSF police. Williams has lost both money and her status as student trustee, as a result of disaccreditation. Williams is suing both in her individual capacity and on behalf of all other similarly situated students of CCSF, and residents of the City and County of San Francisco.

31. PLAINTIFF KIMBERLY M. GINTHER-WEBSTER has been employed as a tenured CCSF faculty member - a librarian - for approximately 8 years. She was part-time for about 5 years before obtaining a full-time, tenure track job in 2005. Ginther-Webster is 55 years of age, and is approximately 10 years away from "normal" retirement. ACCJC's Show Cause decision led to her incurring substantial pay cuts in 2012-2013 and 2013-2014. CCSF decreased her salary each year by nearly 5%, costing her thousands of dollars in pay. The disaccreditation of CCSF will leave her unemployed. Layoff from CCSF will lead to significant financial impacts on her status as a tenured

teacher, and her retirement benefits. She had anticipated that she would work the next 10 years for CCSF, and increase her future entitlement to retirement benefits through service credit and obtaining a higher salary. Neither will occur due to ACCJC's disaccreditation order. Given her age it is highly unlikely she could find equivalent full-time service at a nearby community college. Kimberly M. Ginther-Webster is suing both in her individual capacity and on behalf of all other similarly situated academic employees within the bargaining unit represented by Local 2121 at the City College of San Francisco.

32. PLAINTIFF BIE HAN TAN is a math teacher at CCSF, presently working at the Mission Campus. She was originally hired in 1981 and worked part-time, but left to work as an actuary for Peat, Marwick, Mitchell, an accounting company, and then as a computer programmer in the Information Technology Division of PG & E. She discovered she preferred - loved - teaching math, and gave up the salary which was almost twice as much as she made teaching and returned to CCSF. She was invited to apply to work at Contra Costa College, but declined because she preferred teaching in the multi-ethnic community of San Francisco, and at CCSF. She has been employed by CCSF for about 30 years. At times. Tan taught in CCSF's "Math Bridge" program, that works with at-risk youth, particularly ethnic minorities - African-American, Latino and Native-American populations - to help them learn math. Han herself took 2 years of CCSF classes to learn to speak Spanish. Her layoff and closure of CCSF will end CCSF's Math Bridge program. The program has worked with students to educate and inspire them in mathematics. Many Math Bridge students have succeeded in math classes, when previously they had not done well. These include Mary Bravewoman, who has since become a CCSF math teacher; and others who have completed degrees and found valuable employment. Students who had failed Algebra multiple times learned math through this program. One of her students achieved a BA from UC Davis and an MA in Statistics at CSU East Bay. Students who once were homeless, have succeeded at math and in obtaining a community college education at least partly as a result of this program. Professor Tan was one of just three women mathematics faculty at CCSF when she was hired - now approximately 13 of about 38 CCSF math instructors are women. Professor Tan teaches math to students in a variety of educational programs, from those pursuing a certificate in an allied medical field, to those aspiring to advanced degrees in social work, psychology and computer science. Professor Tan lost pay for 2012-

2013 and 2013-2014 because CCSF cut faculty pay to meet demands of the ACCJC in relation to CCSF's accreditation. PLAINTIFF brings this action in her own name, and on behalf of the other faculty who lost pay and face the imminent loss of additional pay, benefits and their status as tenured teachers, due to Show Cause and Disaccreditation. Bie Han Tan is suing both in her individual capacity and on behalf of all other similarly situated academic employees within the bargaining unit represented by Local 2121 at the City College of San Francisco.

33. PLAINTIFF AUGUSTA GOLDSTEIN, is a former President and Vice President of AFT Local 2121. She currently serves on the union's Executive Board. She was hired by CCSF as a part-time ESL instructor in 1995 and subsequently became a full-time, tenured faculty member, acquiring tenure in 2007. Goldstein teaches English as a Second Language ("ESL") classes, to immigrants in particular, who seek to learn English for various reasons, such as to be more employable. She works at the Civic Center Campus. Due to the Show Cause and Disaccreditation decisions issued by ACCJC, she will be laid off in March 2014, effective on or about June 30, 2014, and her ESL program would be terminated. Goldstein suffered a loss of pay as a result of the demands of Show Cause and Disaccreditation. Her pay was reduced by CCSF beyond the negotiated amount of 2.85% an additional 4.4 % for the 2012-2013 school year, and 5 % for the 2013-2014. Goldstein is a member of the CalSTRS retirement system. She had planned on retiring from CCSF through CalSTRS in or about May 2015, but if laid off in March 2014 as is imminent due to the impending closure of CCSF because of disaccreditation, she will be forced to retire early from CCSF, losing both a higher final compensation and a year of service credit. Since her pension is based on years of service as well as on her three highest years of compensation, an early retirement will mean a lower pension. Augusta Goldstein is suing both in her individual capacity and on behalf of all other similarly situated academic employees within the bargaining unit represented by Local 2121 at the City College of San Francisco.

34. PLAINTIFF TWANICA PEACOCK is a CCSF student who is also a military veteran. She served in the US Navy from 1996 until 2010. Ms. Peacock lives in Fairfield, but commutes to CCSF for the special veteran's services and benefits available through the College. Ms. Peacock has completed four semesters and has three to go including the current semester to meet her educational objectives. She initially took general education classes. She is interested in pursuing a career in

counseling, and is taking psychology classes. She is working on an Associate degree in psychology, and then wants to transfer to a four-year college such as San Francisco State or UC Berkeley. Ms. Peacock has also worked part-time while attending CCSF. She relies on her military benefits to afford to be able to attend college, as she is also raising 6 children. Her GI benefits include a housing allowance, money for books, and tuition. She usually has classes three days a week, and leaves home at 6 a.m. to get to school. If CCSF closes, she is unsure of where she would be able to finish her AA degree. She had looked at Solano Community College before selecting CCSF, but decided on CCSF because of its reputation for serving veterans, and its veterans center. She relies on the veterans' center for meeting her goals. Twanica Peacock is suing both in her individual capacity and on behalf of all other similarly situated students of the City College of San Francisco.

35. PLAINTIFF RACHEL COHEN is a tenured teacher in the credit-ESL program, who was first employed by CCSF in or about 2001 as a non-credit instructor, was hired as a long-term substitute for one year, and then was hired as a tenure-track teacher. She subsequently earned tenured status. She teaches a mixture of students, with varying ages - from young to older adults - and ethnicities. Her students are seeking to improve their English-language skills to improve their employment opportunities, to be better able to help their children with their schoolwork, to earn higher salaries in their jobs, to transfer to a four-year degree-granting school, and to assist in entering various fields of employment, such as nursing. Cohen, age 46, previously was employed in the private sector before pursuing her passion to teach. The pay cuts which were imposed on CCSF faculty in 2012-2013 and 2013-2014, cut her pay substantially, and as a result, she could no longer pay her debts - in particular the payment for her car - and was forced to file for bankruptcy. This process cost her money for a lawyer, and ruined her credit. Cohen, who lives in Daly City, is the mother of four children, which includes three step-children. Her partner has dealt with unemployment during the last year, and her family relies upon her income from CCSF to make ends meet. When laid off in 2014, due to disaccreditation, she will be highly unlikely to find comparable employment both because she will not be able to find openings in local colleges, and because of commute-related obstacles, such as the cost of commuting by car or, if available, public transportation. Cohen ordinarily teaches four classes, and close to 100 students. However, her number of students declined for 2012-2013, because of Show Cause sanction. Her

students indicated they were confused about their status at CCSF, and their educational prospects. Many dropped out of CCSF, despite efforts by Cohen to explain the college remained open. Rachel Cohen is suing both in her individual capacity and on behalf of all other similarly situated academic employees within the bargaining unit represented by Local 2121 at the City College of San Francisco.

36. PLAINTIFF ADRIANA GUTIERREZ is a first year student at CCSF. Originally from Stockton, CA, she recently moved to San Francisco to attend CCSF. In fall 2012 Gutierrez began CCSF's Public Relations/Marketing Program, with an emphasis on Fashion, in hopes of eventually transferring to SF State, to pursue a degree related to her fashion interests. She came to CCSF because of the program's excellent reputation and the breadth of courses offered. Gutierrez is one semester away from beginning her second year at CCSF. This is crucial since she is currently taking general education classes; during her second year she will begin taking classes that are more specific to her program. She is currently working part-time in another city, while simultaneously trying to find work in San Francisco. Gutierrez' plans have been to work part-time (about 20 hours per week) while attending CCSF. If CCSF closes next year, the opportunities that drew Gutierrez to San Francisco will be gone. There is no alternative available for her. No other local community college has the specific program that CCSF offers, and her commute to CCSF is by bus. If she found an available program elsewhere which she could enroll in, she would incur significant transportation costs. Gutierrez has already immersed herself in CCSF, becoming a student body senator. Adriana Gutierrez is suing both in her individual capacity and on behalf of all other similarly situated students of the City College of San Francisco.

37. PLAINTIFF BROOKE DAWSON, PMP ("Project Management Professional"), is in her second semester at CCSF. Dawson received a B.A. from Mills College in French Studies in 1976. In 1978, Dawson became a commissioned officer in the U.S. Navy, where she served honorably in leadership, management, and staff positions. She became experienced in program administration as well as contract and personnel management. After serving during Desert Shield/Desert Storm in the Persian Gulf region and as a U.N. Military Observer in the Western Sahara, she was discharged in 1994 before full retirement in compliance with Congressional mandate for a "peace dividend" (reduction in force) at the end of the Cold War. She has lived in San Francisco since 2006. After leaving active duty, she found that her skills, experience and B.A. were not recognized as valuable by many employers. She has

been offered entry-level phone/receptionist positions using her MS Office skills at $12-$15 per hour. Dawson wants to obtain an MBA/MPA. An associate's degree in Business from CCSF will help build the foundation she needs to prepare for that advanced degree. CCSF is the ideal college because it is close to home, easily accessible by public transportation, relatively low cost, and the business department has excellent instructors. She needs two more semesters to complete the degree, and there are additional complementary classes she wants to take to update her skills, e.g., computer science. If it were not for the financial aid available through the Veteran's Retraining and Assistance Program (VRAP), for which CCSF qualifies, she would be unable to afford college. She depends on this Veteran's benefit to cover tuition, books, and housing in San Francisco. Dawson recognizes that because of her age and educational background, the knowledge and skills she acquires at CCSF are essential to fulfilling her educational goals and potential. Brooke Dawson is suing both in her individual capacity and on behalf of all other similarly situated students of the City College of San Francisco.

38. One result of Show Cause sanction was that students, questioning the likelihood that the college would remain open, dropped out. CCSF suffered a decline in the total unit offered in the credit program of approximately 9.4 % for 2012-2013, , and a decline in the non-credit program. Due to this decline in students, and because ACCJC had determined that CCSF paid too much money to employees for compensation, CCSF reduced counseling services, leading to the layoff of approximately 16 to 18 other part-time counselors in Fall and Winter 2012-2013.

39. Defendant ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES ("ACCJC") is a nonprofit corporation, organized under the Nonprofit Public Benefit Law of the State of California, and incorporated as part of the WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES ("WASC"). WASC's principal office is located in San Mateo County, CA. ACCJC has an office in Novato, California.

40. The PLAINTIFFS are not aware of the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Each fictitiously named Defendant is responsible in some manner for the violations of law alleged.

CLASS ACTION ALLEGATIONS

41. Class Definition. PLAINTIFFS bring this suit as a class action pursuant to Business and

Professions Code section 17203 and Code of Civil Procedure section 382, on behalf of themselves and all other similarly-situated persons as a member of a Class, including potential subclasses, defined as follows:

> "All persons who reside in the City and County of San Francisco,
> all students enrolled or intending to enroll at City College of San Francisco,
> all faculty employed at City College of San Francisco in the bargaining unit represented by LOCAL 2121, since July 1, 2012.

42. Numerosity. The proposed Class is sufficiently numerous in that they include upwards of 1,500 faculty who are employed by CCSF and face the loss of their employment, as many as 90,000 students who face the loss of their college and interruption in their right to a public education at a California community college, and as many as 850,000 residents who enjoy the Constitutional right to attend a public community college within the City and County of San Francisco

43. Class members can be identified by, *inter alia*, records of LOCAL 2121 (employees), records of CCSF (students) and records of the City and County of San Francisco (residents).

44. Common questions of fact and law. Common questions of fact and law exist as to all members of the Class, or potential subclasses, and predominate over any questions affecting solely the individual members of the Class or subclasses. Among the questions of fact and law that predominate over any individual issues are:

a. Whether the ACCJC violated Federal regulations, as alleged below.

b. Whether the ACCJC violated its own policies and procedures, as alleged below.

c. Whether the ACCJC violated California law, as alleged below.

d. Whether issuance of show cause and disaccreditation are unlawful and unfair business practices, and are the result of unlawful and unfair business practices, within the meaning of Business and Professions Code section 17200.

e. Whether Class members lost money or property as a result of DEFENDANTS' violation of section 17200, such as loss of compensation and employment for employees, loss of attendance at CCSF for students, and loss of their right to attend a public community college within the City and County of San Francisco for students and residents.

///

JURISDICTION AND VENUE

45. The Superior Court has jurisdiction over this action. The ACCJC has engaged in, and continues to engage in unlawful and unfair business practices in the City and County of San Francisco, California, and the PLAINTIFFS have the right and authority to prosecute these cases on behalf of themselves, and on behalf of their members.

46. Venue is proper in this Court because the ACCJC transacts business in the City and County of San Francisco ("City") and because many of the acts complained of, such as the ACCJC's evaluations of CCSF in 2012 and 2013, and the Show Cause and Disaccreditation actions were effective as to City College of San Francesco, their student and employees, and the residents of San Francisco. ACCJC also has held "training" sessions for the trustees of CCSF, at which it has set forth requirements for "Board behavior" that, as alleged herein, constitute unfair and unlawful business practices. ACCJC has, by its practices alleged herein, caused serious injury to the students and employees of CCSF, and to the residents and citizens of the City, including but not limited to the harm alleged in this Complaint such as loss of pay, loss of employment, loss of future educational opportunities, and the costs incurred in students pursuing education at another institution.

47. Further, venue is proper in this Court because the individual PLAINTIFF students herein, and those similarly situated, and the residents of the City and County of San Francisco, seek to enforce their Constitutional right under the California Constitution and State law to the continuation of their education, and to their Constitutional right to attend a local public community college within the boundaries of the City and County of San Francisco. Moreover, the individual PLAINTIFF employees and employees represented by PLAINTIFF LOCAL 2121, have a right to continue to earn wages and benefits arising as a result of their status as tenured employees, or under the LOCAL 2121 Collective Bargaining Agreement, but for the aforesaid acts of ACCJC.

FACTUAL ALLEGATIONS

The History of Community College Accreditation

48. Accreditation of American colleges is a process which began in the late 1800s, and became more common in the 1920s, to address the misrepresentation and outright fraud which arose from the "matchbook colleges" which were sometimes little more than shady or fraudulent enterprises,

offering substandard education.

49. In most parts of the world, college accreditation is performed by government agencies. But in the United States, accreditation has generally been a process administered by private, non-governmental “membership” organizations.

50. There are six major regional higher accreditation bodies in the United States, which were created in the 1930's, or earlier. They include Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Accreditation Commission, Southwestern Association of Colleges and Schools and the Western Association of Schools and Colleges–ACCJC. These six bodies are organized along geographical lines, and each has virtually monopolistic control of higher education accreditation within the territory of their jurisdiction.

51. The ACCJC accredits nearly every public community college, and a handful of private two-year colleges, in California, Hawaii, and among the Western Pacific Islands. It accredits every California community college.

52. Although accreditation of colleges was originally voluntary, it eventually became mandatory if a college wanted to receive Federal (and sometimes state) financial aid, or its students are to be eligible for Federal (and sometimes state) financial assistance, in the form of grants, and loans, or, as in California, state law requires it. In 1965 Congress enacted legislation requiring that as a condition of students receiving Federal financial aid, colleges and universities had to be accredited by an accrediting association recognized by the U.S. Secretary of Education. (Higher Education Act of 1965, Pub. L. No. 8-329, 79 Stat. 1219, 1247 - 1248, 20 USC § 1001) To qualify for Federal financial aid and funds, colleges also had to be authorized by a state education agency. (*Id.*)

53. Although in 1992 Congress eliminated the requirement of State authorization, in 1991 the California Community Colleges had adopted a regulation (5 Cal. Code Regs. § 51016) requiring all public California community colleges to be accredited by the ACCJC. It provides,

> “Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation.”

CCSF is therefore required to be accredited by the ACCJC.

54. Federal regulation of these private accrediting agencies is minimal. The only question addressed by the Federal government is whether a private accreditor should be "listed" by the Secretary as reliable. The Federal government, in particular the US Department of Education ("USDE"), cannot take any action to restrain violations by an accreditor of Federal regulations, State law, or its own policies, nor to reverse or challenge any accreditation decision issued by an accrediting body. To the contrary, the Department of Education does not concern itself, in general, with whether an accreditor follows its own policies, or complies with State law.

55. Under the system of accreditation which is required for Federal funding of colleges and Federal loans to students, the United States Secretary of Education reviews accreditors such as the ACCJC to determine if the Secretary will recognize or list them as "reliable accreditors." Nothing in the federal regulations applicable to accrediting agencies exempts accrediting agencies from compliance with state law, or from being required to comply with its own legitimate policies. See 34 CFR Part 602. On the contrary, the federal regulations recognize the primacy of state law in the matter of education. (See, e.g., 34 CFR Sec. 602.3 providing definitions, including that for an "accrediting agency" – defined as an agency "that conducts accrediting activities through *voluntary, non-Federal peer review....*") (Italics added). Nor does Federal law preclude State courts from considering whether an accreditor violated Federal regulations in a decision to sanction or disaccredit a college. Hence, when the USDE recently determined that the ACCJC had not complied with Federal regulations when it placed CCSF on "Show Cause" sanction in July 2012, the USDE was without authority to order reversal of Show Cause. USDE is also without authority to order reversal of disaccreditation. Rather, that authority rests with this Court. The USDE may only evaluate a college's compliance with Federal criteria for purposes of recognition by the Secretary.

56. The ACCJC is not a federal agency. It is a private organization. The U.S. Secretary of Education periodically reviews these accreditors to assure that they are "reliable authorities regarding the quality of education." (34 CFR § 602.1) In other words, they are merely "*recognized*" by the federal government as providing adequate accreditation services. In addition, the Secretary of Education sets certain standards which an accreditor it recognizes must meet. The USDE also accepts complaints that an accreditor fails to satisfy these standards. The USDE has found ACCJC in violation of Federal

requirements for accreditors three times in the past four years, most recently on August 13, 2013, when it determined that the accreditation evaluation of CCSF, undertaken by ACCJC in 2012, was done in violation of several Federal regulations.

57. The Federal regulations, in 34 CFR section 602.16, state that a recognized accreditor must have standards that are "sufficiently rigorous" to enure the agency is a "reliable authority regarding the quality of the education ... provided by the institutions ... it accredits." It says also that an accreditor satisfies this requirement if its standards address the quality of education in 10 listed areas in section 602.16. These areas include "curricula", "faculty", "fiscal and administrative capacity as appropriate to the specified scale of operations", and seven other designated topics. These Federal standards require less than 150 words to delineate. An agency that has "established and applies" these 10 standards "may establish any additional accreditation standards it deems appropriate." ACCJC has adopted at least 42 standards, and beyond those standards it has adopted hundreds of elements, and applies many criteria which it does not publish. It's list of Standards is 25 pages long. ACCJC has checklists which add further criteria, some of them developed by individuals alleged herein to have conflicts of interest.

a. ACCJC found CCSF at fault in 2012 and 2013 for alleged deficiencies in many standards and elements or criteria invented by the ACCJC, some of which are unpublished, underground standards such as prefunding of other post employment benefits, board members speaking as one and not dissenting from decisions of the majority, dissenting voices by students, faculty, faculty and student organizations, college trustees, and even the public, and dissent expressed "dis-harmoniously" in public forums, even at public board meetings which allow for public input, which are protected by freedom of speech. These "additional" standards were a substantial reason ACCJC ordered Show Cause and then Disaccreditation.

b. These additional standards, in many instances, conflict with the public policy of California, are arbitrary, capricious or unreasonable, do not measure the quality of education provided by the institution, violate common law fair procedure and due process, and the Constitutional rights of students, faculty and the public, alleged herein.

58. As we discuss below, the ACCJC's illegal 2012 evaluation led directly to ACCJC's decision, announced on July 3, 2013, to disaccredit CCSF effective July 31, 2014. Because ACCJC's

disaccreditation decision rests on unfair and unlawful business practices, it should be enjoined from giving effect to or enforcing this decision. ACCJC's decisions for both Show Cause and Disaccreditation should be rescinded.

California's Community Colleges and City College of San Francisco

59. Public education has long been of fundamental importance to the State of California. Article 9, Section 1 of the State Constitution, adopted on May 7, 1879, states: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."

60. This right to a public education has been "traditionally protected" by the state legislature.

The Creation of California's Community College System

61. In implementing this right to education, the California legislature decreed that the State should establish and maintain community colleges throughout the State. Thus, "all of the territory of the State shall be included within a community college district". (Cal. Education Code § 74000; there is an exception in the law for counties with fewer than 350 "equivalent" community college students per year. However, in reality there are none like that.) In other words, the law requires that every one of California's 58 counties must have a public community college district. (See Education Code § 74000)

62. Some counties have multiple colleges and districts, such as Los Angeles and Santa Clara. San Francisco has a single District, the San Francisco Community College District, which operates a single college, City College. As provided in section 70902, local college districts are part of a larger college system regulated by California law.

63. California has played a pivotal role in the development of community colleges in the United States. The first California community colleges were created just over a hundred years ago as adjuncts to local secondary schools, beginning with Fresno in 1909, followed by Santa Barbara and Bakersfield in 1913. In 1917 the Legislature introduced the term "junior college" into the education lexicon, with the adoption of the Ballard Act (former Political Code § 1750(b)). This law led to the development of 38 California community colleges by the early 1930's. (See *History of the Junior College Movement in California*, Carl S. Witter, Dec. 1964, Cal. Dept. of Education, pp. 8-20) City

College of San Francisco was founded just three years later. At first most of these colleges were "appendages" of local secondary schools, but they grew rapidly and eventually began to stand on their own. Junior colleges were viewed as a means to address the unemployment crisis of the 1930's. In the 1940's, the returning World War II veterans flocked to the community colleges, assisted by the Federal G.I. Bill. Thus the colleges continued to grow. (See "*The Shaping of the American Community College Mission*" (2005), Jerry A. Somerville, Napa Valley College available at: http://jasomerville.com/wp-content/uploads/2011/07/HistCommColForCollegeMoment050126word.pdf , last accessed Sept. 15, 2013).

The Master Plan for Higher Education and the Community Colleges Open Access Role

64. Junior colleges took on added importance when in December of 1959, the Board of Regents of the University of California and the State Board of Education, at the urging of Governor Edmund G. Brown, unanimously approved the "Master Plan" for Education in California. The Master Plan was signed into law in Spring 1960. It was "the high step forward in higher education in the State of California." (Governor Brown, quoted in *California Rising: The Life and Times of Pat Brown*, Ethan Rarick, University of California Press, 2005, pp. 147, 163.)

65. At the core of the Master Plan was California's commitment of "universal access to higher education" for California residents, rich or poor. This mission was exemplified by the triumvirate of the UC System, the state college system, and the California community colleges. The guiding tenet of this new system was to "provide an appropriate place in California public higher education for every student who is willing and able to benefit from attendance." "The mission of the community college" has been summarized as a "series of commitments which included providing "open access to all segments of society with equal and fair treatment of all students, offering a comprehensive education, serving the local community, and providing opportunities for lifelong learning." (Somerville, The Shaping of the American Community College Mission (2005), Napa Valley College)

66. In 1984 the Legislature created a commission to review the Master Plan (SB 1570, Stats. 1984, Ch. 1507). The Master Plan was reaffirmed in the Commission's 1987 report to the Legislature, which again emphasized the goal of "educational equity," stating:

> "Educational equity must have the commitment of the Governor, Legislature, the segmental governing boards, and the California Education Round Table and be **a principal element in**

every aspect of institutional operations." (Report to Legislature, emphasis added; the Report is available at: http://www.oac.cdlib.org/view?docId=hb538nb32g;NAAN=13030&doc.view=frames&chunk.id=chap2&toc.depth=1&toc.id=chap2&brand=oac4) (Last accessed September 12, 2013)

67. In 1988 the Legislature took another step forward when it revised the Education Code with comprehensive legislation to formally recognize the community colleges as part of a statewide community college system. (A.B. 1725, Stats. 1988, Chap. 973) Again the Legislature reaffirmed the open access mission of the community colleges, and an overriding intent of equal economic opportunity for all students:

> "SEC. 5. The Legislature finds and declares the following **with regard to access** to the California Community Colleges, and the importance and value of success to those who participate in the system:
>
> (a) **It is the responsibility of this state to provide to every Californian the opportunity** to realize his or her intellectual, emotional, and vocational potential. To fulfill this responsibility, and to ensure that California enjoys a healthy economy and society, **open access to a quality community college system must be affirmed for a diverse student population**, which includes, but is not limited to, ... **persons at a variety of income levels**, ...
>
> (c) **Open access to community colleges must be assured for all adults who can benefit from instruction** ..." (Stats. 1988, Chap. 973, section 5, note to Ed. Code § 70900, emphasis added)

68. The Legislature once again reaffirmed the open access mission in 1991 with the adoption of AB 617. This bill was designed to identify common educational missions for all public educational institutions in California. It included this declaration:

> "Education Code section 66030 (a). *It is the intent of the Legislature* that public higher education in California strive to provide educationally equitable environments that give each Californian, **regardless of** ... **economic circumstances**, ... a reasonable opportunity to develop fully his or her potential."
>
> "... The Legislature hereby reaffirms the commitment of the State of California to provide an appropriate place in California higher education for *every student who is willing and able to benefit from attendance*." (Education Code section 66030)

69. The 2002 revision of the Master Plan stated:

> "The State should bring postsecondary education into an integrated accountability system by developing a set of accountability indicators that are consistent with state policy objectives and institutional missions and that would monitor quality and equity in access and achievement of all students in common academic content areas. All public, independent, and private institutions should be required to participate in the reporting of these accountability indicators as a condition of receiving state moneys either through direct appropriation or student financial aid."

70. Since 1959 California's three-part system has grown to keep pace with California's growing population. Today California's public higher education system includes the 10-campus University of California, the 20 campus California State University and Colleges, and the California Community College System. The community college system includes 112 public community colleges in 72 community college districts, each with a publicly-elected board of trustees. The University of California and the CSU system each have a special place in this system of public higher education, but admission to these systems is limited. UC is highly competitive, and CSU's colleges also limit admission based on various criteria. However, the community colleges have continued to provide for open access to the people of California. The California community colleges now constitutes the largest system of higher education in the world, and serves nearly 2.5 million students each year.

71. CCSF, like every California community college, serves as a bridge to UC and CSU, for thousands of students, thanks to carefully coordinated matriculation agreements. "If you're a senior in one of San Francisco's (19) high schools, odds are, you're going to City College or San Francisco State." Maureen Carew, director of the Bridge for Success program at San Francisco Unified School District, reported February 5, 2013 in the *Golden Gate Express*, "CCSF Accreditation Requirements Put Students On Edge, by Joe Fitzgerald, available at: http://www.goldengatexpress.org/2013/02/05/ccsf-accreditation-requirements-put-students-on-edge/ ; last accessed Sept. 14, 2013) Carew stated that about one in four of San Francisco Unified School District's 4,000 annual graduating seniors sign up for CCSF every year, while one in 10 go to SF State. *Id.*

72. History indicates that when Compton Community College was shut down as a result of disaccreditation by the ACCJC in 2006, none of the public community colleges around it had a significant increase in students. (See Ann Garten, media relations director for El Camino College, quoted in the *Golden Gate Xpress*, February 5, 2013, *supra*.)

73. One UC official explained in 2010 how "Attending community college and then transferring to UC is a cost-effective option for students and for the state." (See "From community college to a UC degree, Nov. 2010, at: www.universityofcalifornia.edu/youruniversity/archive/2010/november/from-community-college-to-uc-

degree.html ; last accessed September 16, 2013) Many courses offered by CCSF are transferrable to the UC or CSU system, and no questions have been raised about their satisfying UC and CSU Standards.)

74. The Master Plan and its mission have been revisited and reenacted on many occasions since 1959. The Master Plan has survived efforts undertaken by some who prefer a narrower mission, one which is less open and less costly. The periodic statewide discussions about the Master Plan have occasionally spilled over into serious controversy which, as discussed in detail below, arose during 2011 and 2012.

a. While some colleges supported curtailing if not eliminating the Plan's open access mission, CCSF strongly supported it. The CCSF's board of trustees, administration, students and employees, led the fight to retain the open access mission. The dispute attracted a number of interest groups, such as the "Campaign for College Opportunity" ("CCO"), which despite its name, opposed open access.

b. But the most unusual opponent of open access and CCSF was the "impartial" accreditor, the ACCJC. ACCJC took a partisan position on efforts, including legislation, to change the mission of California's community colleges. ACCJC publicly and prominently opposed CCSF even while it appointed a "visiting" evaluation team and commenced reviewing CCSF's accreditation. These activities are discussed further below. They conflict with Federal law (34 CFR § 602.18) which demands that an accreditor "must consistently apply and enforce standards that respect the stated mission of the institution ..."

City College of San Francisco

75. CCSF has a long and accomplished history which evolved out of and parallels the growth and goals of California's community colleges. When City College was established, 1935, as part of the San Francisco Unified School District, it educated approximately 1,100 students. The number of students gradually rose, to 8,400 students by the Fall of 1962, and then to 17,763 students in 1971. CCSF became a separate community college district in 1970. Under its first chancellor, Louis F. Batmale, it began a "bold original educational program" to bring relevant credit and non-credit classes to adults throughout the City's neighborhoods. By the time Batmale retired in 1977, CCSF's enrollment exceeded 60,000 students, and it was well on its way to becoming the multi-faceted, excellent institution

it is today. Over the next 20 years, CCSF continued to expand its academic programs and services to the community. "In response to the changing needs of those living and working in San Francisco, innovative courses, programs, and services were added throughout the City, continuing the college's long-established commitment to offer educational opportunities to San Franciscans from all walks of life." (Julia Bergman, Valerie Sherer Mathes & Austin White, *City College of San Francisco* (2010)).

76. In 2006, an independent team of external evaluators which ACCJC appointed to evaluate City College of San Francisco ("CCSF") recognized it as "one of the premier community colleges in the region," and that the college's activities surrounding the accreditation "reaffirmed the excellence of the college ..." (2006 Evaluation Team Report, p. 4.)

77. CCSF continues to excel. In the most recent objective statistics issued by the Chancellor's Office of the California Community Colleges, CCSF is one of the most effective, finest community colleges in the State, at providing an excellent education. Several of its programs are separately accredited by specialized accreditors which are not part of the ACCJC or WASC. For example, the Paralegal Studies Program is accredited by the American Bar Association and the Paramedic and Medical Assisting Program by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). These separate, specialized accreditors have continued to accredit CCSF programs, despite ACCJC's Show Cause and disaccreditation actions.

78. CCSF became one of California's finest community colleges.

a. By 2011-2012, CCSF offered approximately 140 career or vocational programs within 35 general fields, including Administration of Justice and Fire Science, Broadcast Electronic Media Arts, Business, Child Development and Family Studies, Computer Science, Culinary Arts and Hospitality Studies, Engineering Technology, Graphic Communications, and Health Care Technology. Among the specific occupations students may obtain training for are: paramedic, aircraft maintenance engineers, certified paralegals, computer programmer, chef, air conditioning and heating engineers, EKG technician, registered nurses (RN and LVN), dental assistant, photographer, web designer, and scores of others. Some of these programs are so popular and in demand, and have such excellent reputations, that the only way into the program is through a lottery system. Programs using the lottery system include LVN, RN and Radiology. (See: www.ccsf.edu/NEW/en/educational-programs/school-and-departments/school-of-health-and-physical-education/lvn-new-design/how_to_apply_lvn.html and www.ccsf.edu/NEW/content/dam/Organizational_Assests/ Department/Health_Physical_Education/Registered_Nursing/RN_PDF/Nursing_Information_Brochure_July_2012.pdf ; last accessed, September 16, 2013) ACCJC has not cited, in connection with its 2012 Show Cause sanction decision or its 2013 disaccreditation decision, any shortcomings in the quality of the education delivered to students by any of these 140 programs.

b. The breadth of CCSF's career education is no coincidence. The Master Plan for Education "... encourage[s] all Community Colleges… to work closely with local business and industry to meet the economic development and employment training needs of the [local] community through vocational education, job training, and employer-specific contract education programs." (A.B. 3938 Task Force Report, 1984, p. 27)

79. California's public funding crisis of the past 6 years has taken its toll on CCSF, just as it has on every California community college. In the face of the worst recession in a century, the citizens of San Francisco affirmed their strong support for CCSF. On November 6, 2012 they adopted Measure A, agreeing to a parcel tax to be used to maintain instruction at the College. But if the ACCJC's disaccreditation order stands, all of that is now for naught.

80. In recent years, City College has served a highly diverse student body of more than 85,000 students per year. In the 2009-2010 school year, for example, approximately 30% of the student body was Asian, 27% was White, 18% was Hispanic, 8.5% was African American and 6.75% was Filipino; approximately 15% of the students were nineteen years old or younger, 47% were in their twenties, 18% were in their thirties, 10% were in their forties and 10% were in their fifties or older.

81. City College has ten campuses—Ocean (Ingleside), Mission, Civic Center, Chinatown, Southeast (Bayview), Evans, Noe Valley, John Adams (on Masonic), Fort Mason, and Downtown—and over a hundred single class "instructional sites" throughout San Francisco in various office spaces, spare classrooms, and other locations. City College offers dozens of different associate degrees, hundreds of credit and noncredit certificate programs and thousands of classes—including noncredit classes offered for free to anyone who could benefit from further education.

82. For many San Franciscans, City College is the only viable option for higher education.

For a very modest cost, students of all ages and backgrounds can attend City College to earn an associate's degree and to acquire sufficient credits to transfer to a four-year bachelor's degree program, and for no cost can take classes to acquire valuable skills that will allow them to find a job or advance their careers.

83. Although the State of California provides funding to community colleges for both credit and noncredit classes, the funding rate is significantly lower for noncredit classes. Accordingly, when the State began cutting funding in 2008-2009, many California community colleges responded by dramatically reducing noncredit courses. *See* Public Policy Institute of California, *The Impact of Budget Cuts on California's Community Colleges* 14-15 (March 2013). City College did not. City College maintained hundreds of noncredit courses for the 2012-2013 year.

84. Many of these noncredit classes (e.g., automotive technology, construction, accounting and bookkeeping, computer applications and health care) are designed to help adult learners improve their job prospects or enhance their job skills.

85. City College's Older Adults Department offers free lifelong learning classes specially designed for those 55 and older at more than 30 locations throughout San Francisco. Courses span a wide range of disciplines, such as computer training, health and wellness, language arts and the arts. Classes, so long as they are not full, allow registration during any time of the semester. This inclusiveness of all levels makes the programs accessible to anyone who wants them. The Older Adults Program has been serving the San Francisco community for over 30 years- proudly helping people gain knowledge, learn new skills and stay active.

86. The Child Development and Family Studies Department offers free parenting and child observation classes to parents of young children who believe they would benefit from assistance and education in facing the challenges of parenthood. However, the department also offers students degrees in the Child Development field and support services to transfer to 4 year colleges or universities. Furthermore, students can earn Child Development Permits by completing courses at CCSF. These permits make them employable in various child care settings. The Department hosts PDP (Professional Development Project) advisors who are able to certify permit applications for the California Commission on Teacher Credentialing, which oversees credentials for teachers in the K-12 public schools.

87. The free noncredit classes offered by the Disabled Student Programs and Services include Coping With Acquired Brain Injury, Stroke Communication, Job Search Skills, Community Living Skills, Communication for the Blind and Lipreading. There are also credit, non-degree applicable courses such as diagnostic learning, main idea strategies for reading and writing, strategies for problem solving and survival writing skills. Many students take DSPS (Disabled Students Programs and Services) classes and "mainstream" classes at the same time.

88. CCSF's English as a Second Language ("ESL") Department, the largest department in the college, provides free noncredit ESL classes to about 20,000 students every year. The classes are essential for them to secure employment, advance in their education, and in some cases to become citizens and exercise their right to vote. Students have the option of focusing on particular skills such as speaking, listening, reading and or writing as they work their way through the non-credit program. Currently there are over 1,200 students from 90 countries studying at CCSF's various campuses. (See "International Student Programs" at: https://www.ccsf.edu/international/ ; last accessed September 16, 2013) In 2004, some 19,000 students signed up for non-credit ESL classes and around 3,200 took ESL for credit. (See "The Vital Role of Community Colleges in the Education and Integration of Immigrants" at: www.gcir.org/sites/default/files/resources/GCIR_ComCollege_web.pdf ; last accessed September 16,2013) CCSF was also a part of a two year study entitled, *Passing the Torch: Strategies for Innovation in Community College ESL* by Forrest P. Chrisman and JoAnn Crandall (Council for Advancement of Adult Literacy 2007). The study looked at CCSF and 4 other colleges: Bunker Hill Community College, Charlestown, MA; The College of Lake County, Grayslake, IL; Seminole Community College, Sanford, FL; and Yakima Valley Community College, Yakima, WA, ESL programs as they were identified by ESL experts and peers as "exemplary in their provision of adult ESL Service." The study further found that, "The learning gains and transition of adult ESL students at the five community colleges...have developed a variety of innovative strategies for improving ESL Service and exceed national norms and norms for their states..." (See "The U.S. Immigrant Population: Demographics Education, Labor Force, and the Economy" at: cccie.org/immigration-and-education-resources/higher-educationfacts ; last accessed, September 16, 2013)

89. CCSF offers scores of innovative programs designed especially to serve the diverse

population of San Francisco. These programs are not found elsewhere, and will be ended on July 31, 2014, due to disaccreditation. Here are some examples, which illustrate the harm resulting from ACCJC's unfair and unlawful practices:

a. The Veterans Educational Program. Several years ago, CCSF approached the Department of Veteran Affairs with the idea of creating a veterans center on campus. In 2010, CCSF opened the Veterans Resource Center, expanding their services to even more students in need. The Center was, "touted as a model for the future- the first health care offered by the VA on a college campus. The staff includes a social worker and a psychiatrist who assist veterans in finding jobs and obtaining other services from the VA. (See SF *Gate*, "Rare City College VA clinic supports student vets" Aaron Glantz, July 28, 2013) There are at least 150 colleges that educate the largest numbers of Iraq and Afghanistan veterans. CCSF is one of best, named for 2010, 2011 and 2012 as one of the "top military friendly schools in the nation", according to GI Jobs Magazine in 2010, 2011, and 2012 (See, e.g.,"Veterans on Campus" ; at: http://www.ccsf.edu/NEW/en/about-city-college/marketing_publications/ccsf-publications-and-media/CCArchives/city_currents_2013/citycurrentsaugust22issue/featured_stories.html#veteranslast accessed September 21, 2013) San Francisco's Veterans Administration Medical Center, the Veterans Outreach Program and CCSF work together to serve Veteran students. The nationally recognized Veterans Services Program supports "approximately 1,000 student veterans and their dependents at the college." *Id*. Almost half of are student veterans who were deployed in the war zones of Afghanistan and Iraq. The CCSF Veterans Service Office, in collaboration with the Veterans Resource Center and the Veteran's Alliance Student Club, offer Mental Health Services and a 24 hour Emotional Crisis Hotline. The Veterans Alliance helps veterans find scholarships. The Veterans Retraining Assistance Program offers 12 months of training to vets who are at least 35 but no older than 60, to assist vets that do not qualify under any of 8 primary entitlement programs. CCSF's closure in July 2014 will end the above educational opportunities for thousands of military veterans

b. The Fire Fighter Academy. CCSF's Fire Fighter Academy is a critical link in the emergency services protections of the City of San Francisco. As one of the most competitive careers in the Bay Area, CCSF offers its students an advantage other students do not necessarily get. Lt. Mindy

Talmadge, the spokeswoman for the San Francisco Fire Department, has stated that, "It can take years and year to get into a fire department. Candidates are often weeded out when they attempt the department's Fire College. Yet the most successful students are those who have previously completed City College's fire science cadet program, which includes 15 weeks of training in a fire station. I'm not aware of any other colleges that offer that." (See "Closing CCSF would have huge impact" at: www.sfgate.com/education/article/Closing-CCSF-would-have-huge-impact-4570354.php; last accessed, September 19, 2013) Students in CCSF's Fire Fighter Academy completing the two year Fire Science Technology program receive an Associate of Science Degree in Fire Science Technology and a Certificate in Fire Protection. Students successfully completing the Fire Fighter One Academy also receive an Educational Fire Fighter One Certificate, "which qualifies them to test with fire departments throughout the State of California." *Id.* They are also be eligible to apply for Firefighter Cadet Programs with local fire departments, hence their opportunity to be hired by these local department increases. *Id.* Academy students are exposed to a variety of career choices, including Firefighter, Fire Prevention Inspector, First Responder, Emergency Medical Technician and Paramedic.

c. Guardian Scholars Program. In spring 2008, CCSF launched the Guardian Scholars Program based on its the open enrollment mission. It is funded mostly by private donors and the Associated Students of CCSF. The program's goal is to help students exiting the foster care system or who have been in the foster care system through support programs that help students complete the GED, AA degrees, certificate programs and transfer to 4 year institutions. The eligibility requirements for this program include a current or former foster youth up to age 25, at least one year in foster care, application to CCSF, Math and English placement tests and enrollment in designated college success class(es). (See "Guardian Scholar Program" at: www.ccsf.edy/NEW/en/student-services/financial-aid/OtherFAResources/GuardScholarProg.html ; last accessed, September 19, 2013)

CCSF's Financial Aid Office is critical as these students are, by definition, without financial resources. Students receive financial aid, housing assistance, academic/career counseling and health services *Id* The program presently includes a computer lab, student activity area, and space for the program's "partnering service providers", such as, the Larkin Street Youth Services, the Independent Living Skills Program, MathBridge and others. (Annual Program Review Fall 2012 at:

www.ccsf.edu/NEW/content/dam/Organizational_Assets/Department/Research_Planning-Grants/Program%20Review%202011-2012/ProRev/VCStudentDevelopment/FAO-Main_2012_revised.pdf ; last accessed, September 19, 2013) When the program began it served 151 students. Enrollment has increased to 200. 198 out of the 200 students receive financial aid and 58% are also employed, with 20% of those working over 20 hrs/wk. (See "City College of San Francisco Guardian Scholars Program 2009-10 Annual Report, *supra.*)_ 70% of the 200 students in Spring 2011 advanced to the spring 2012 semester. These students are able to achieve a community college education only through the assistance of this program. Students in the program have demonstrated educational achievements - one was the spokesperson for the Obama Administration's Summer Job Youth Initiative, and another was the Graduation Speaker at CCSF. (See "Annual Program Review Fall 2012" supra.)_Without this program, the majority of these foster care system students would not have the means to pursue a higher education.

90. CCSF is above average in the primary statistical measures used by the State to evaluate "student success" in the community colleges. These are: *transfer velocity*, the *average GPAs of their transfer students in the California State University System*, *completion rate* for *college prepared* students, *completion rate* for *college unprepared students*, and *total completion rate*.

91. Among the California community colleges, the average transfer velocity to 4 year institutions is 38.2%. But CCSF's transfer velocity is 48.1%, placing it in the *top 12 percent of California community colleges*.

92. For those California community college transfer students who attend CSUs, the average GPA was 3.03 for the Fall 2011 semester. City College's student who transferred to CSU's was *above average* compared to their peers in that category, maintaining an average 3.08 GPA in the Fall 2011 semester.

93. CCSF also maintains *higher than average* completion rates for its college- prepared students. In the category of completion rate for college-unprepared students, City College is admirably in the top 3% of all California Community Colleges.

94. For total completion rates CCSF is in the *83rd percentile* of all California Community Colleges - the top 20%.

95. CCSF is in rare company. Of the 112 California community colleges only 21 colleges are above average in each of the categories of: transfer velocity; GPA of transfer students at CSU; Completion Rate for College Prepared Students; Completion Rate for College Unprepared Students; and total Completion Rate. Of these 21 colleges, 8 (38%) have been on sanction at some point in the past ten years. Two of these high performing schools have been placed on Show Cause (City College and Diablo Valley). ACCJC neglects to refer to this evidence of academic quality, or give it appropriate weight, in its decision to disaccredit CCSF.

96. City College is critical not only to the tens of thousands of students it serves—many of whom are from immigrant and working class backgrounds—but to the fundamental promise of equal opportunity in San Francisco.

Accrediting Commission For Community And Junior Colleges

97. The ACCJC is a private entity that accredits community and junior colleges in the Western region of the United States. The ACCJC has two primary "bodies," its commission and its staff. The ACCJC staff manages, directs, supports and determines accreditation activities of the Commission. ACCJC presently has an executive staff of six: a president—Dr. Barbara Beno—and five vice presidents: Susan Clifford, Krista Johns, Garmon Jack Pond, Norval Wellsfry and John Nixon. The Commission itself, which consists of 19 part-time, voluntary commissioners, meets twice annually, in meetings which are mostly closed to the public. It is in these closed meetings that it votes to accredit or sanction a college. Upon information and belief, the Commissioners are unpaid, although they are reimbursed for expenses associated with their service. The Commissioners serve for 3-year terms, and a maximum of two terms.

98. The ACCJC appoints mostly "volunteer" visiting teams to evaluate colleges for accreditation purposes. These teams consist of anywhere from 2 to 20 members. Some of the members have been commissioners or staff members of ACCJC (which we allege, below, to be an improper conflict of interest) but most of them are administrators of California community colleges, faculty, college trustees, and occasionally "classified employees." (Below we allege that the mix of such team members, in CCSF and generally, violates Federal regulations, and constitutes an unlawful and unfair business practice.) While most of the teams have at least a few faculty, some have none.

99. ACCJC is one of three accrediting commissions which currently operate under a corporate entity, the Western Association of Schools and Colleges ("WASC"). The Accrediting Commission for Schools, accredits all schools below the college level including elementary, junior high, middle, high and adult schools; the Senior College and University Commission, accredits public and private four-year colleges and universities, such as the University of San Francisco and San Francisco State University. WASC is a 501(c)(3) public benefit corporation. WASC is recognized by the federal Department of Education ("USDE" or "DOE") as one of six regional associations that accredit public and private schools, colleges, and universities in the United States. The Western Region covers institutions in California and Hawaii, the territories of Guam, American Samoa, Federated States of Micronesia, Republic of Palau, Commonwealth of the Northern Marianas Islands, the Pacific Basin, and East Asia, and areas of the Pacific and East Asia. ACCJC is currently in the process of "separating" somewhat from WASC and incorporating in its own name as a 501(c)(3) public benefit corporation. However, all of the acts complained of here arose while it has been part of the WASC.

100. To fund its operations, ACCJC relies on annual membership dues and various fees and other charges, which are paid by the colleges it accredits, and which are based, in part, on the size of a college. In 2012 these annual dues ranged from a low of a $5,497 annual fee (a college of less than 500 headcount) to $29,321 for a college with enrollment above 40,000, such as CCSF, and variations for multi-unit institutions. In 2013 CCSF's assessment increased to $32,253.

a. ACCJC charges additional fees and expenses for such things as follow-up visits, special visits, and its review of college reports. In 2012-2013 this included a charge of $1,000 for special or follow-up visits, expenses and 15% of ACCJC administrative costs; $2,000 for public institution eligibility fees; "substantive change" charges of $500 - $750, and various fees for other services. The more colleges are sanctioned by ACCJC, the more teams are selected, more visits are made, more reports to issue, more follow-up visits, and more seminars and conference presentations to instruct colleges on ACCJC requirements. For example, ACCJC conducted five team visits of sanctioned College of the Redwoods between 2006 and 2012, and according to its policies, should have assessed a fee for each visit. It conducted 6 visits to sanctioned Solano Community College from 2008 to 2012, and according to its policies, should have assessed a fee for each visit. For every team visit, ACCJC policies state it also charges expenses and some overhead. The visiting team's April 2012 visit to CCSF meant that up to 17 team members were put up in the Handlery Hotel at Union Square for 5 days, and CCSF reimbursed ACCJC for all expenses, including meals.

b. ACCJC advertises and encourages colleges to hold special seminars, or even special board meetings, or other events where ACCJC speakers discuss a variety of topics related to accreditation. President Beno and various ACCJC Vice Presidents are frequent speakers at these or similar events. ACCJC is quite successful in getting colleges which have been sanctioned to hire ACCJC for "training" in accreditation. President Beno distributes biannual reports to the ACCJC in which she details the many speaking engagements she has had. Upon information and belief, ACCJC receives compensation for these presentations.

c. Besides the above, ACCJC is a regular participant as a presenter at conferences put on by organizations involved with the California community colleges such as the Community College League of California (CCLC), the Northern California CEO's Conference, the Southern California CEO's Conference, the Chief Business Officers Association, the Campaign for College Opportunity, the Lumina Foundation, and the Academic Senate for California Community Colleges.

d. According to President Beno's December 17, 2012 Budget memo, ACCJC's anticipated income for 2013-2014 from colleges dues was $2,659,584, of which the majority is from California community colleges.

e. In 2007-2008 its accreditation activities earned ACCJC $3,201,948 on expenses of $ 2,553,617, for net receipts of $648,331 - a "profit" of 29.4 %. In 2008-2009 ACCJC had income of $3,543,018 and expenses of $2,583,548, leaving a net "profit" of $954,470 or 27.05%. In 2009-2010 it earned $2,539,465 on expenses of $ 1,857,002, a profit of $682,463 or 26.8 %. In the most recent filing with the California Secretary of State ACCJC earned during 2010-2011 the sum of $2,701,494 on expenses of $1,865,091, a profit of 834, 403 or 30.5 %. This return far exceeds that of the WASC as a whole, which had net profits, including ACCJC, of just 1.71 % in 2008-2009, 8.91 % in 2009 - 2010, and 17.94 % in 2010-2011. Without ACCJC's huge "contributions," WASC would have run enormous losses for the last three recorded years.

f. ACCJC's president and vice presidents are well compensated, and while

California colleges faced huge budget salary cuts, over the last several years, ACCJC personnel enjoyed regular pay increases which exceeded inflation. President Beno's salary increased by more than 25% from 2006 until 2010-2011, from $204,686 to $257,438 per year.

101. The Bylaws of the Commission provide that its president shall be its Chief Executive Officer, responsible for the general supervision, direction and control of the operations of the ACCJC, including its business and accreditation operations. (Bylaws, 2013 ed., Article VII, Section 6) Some of the president's duties are specified in various ACCJC documents, and others appear from Commission practice. The following duties are specified in various Manuals and policies, or are evident from other Commission documents, or statements by President Beno and others:

- Determine the size of and select the members of the visiting evaluation teams in conjunction with other staff members (Team Evaluator Manual 2.3)
- Receive applications from faculty and others to serve on evaluation teams, review applications and supporting recommendations, and determine who is eligible to serve on evaluation teams.
- Support Visiting Teams as necessary. (Quality Assurance: A Formative Review 2008)
- Provide Information to evaluation teams, special committees or task forces, or to Review Committees (part of appeal process) (See, e.g., Policy on Review of Commission Actions)
- Review Draft evaluation reports by evaluation teams to assure they satisfy ACCJC requirements (Quality Assurance: A Formative Review 2008), make suggestions for changes.
- Appoint members of Review Committees (Policy on Review of Commission Actions)
- Engaged in the "national debate" on accreditation (practice and various events)
- Reviewing the "statement of reasons" necessary to be deemed as valid in order to be granted an appeal. If staff decides, and the Commission chair concurs, that the statement of reasons is deficient, then appeal is denied, the decision is final, and "not subject to the WASC appeals process." (Policy on Review of Commission Actions)
- Participate in preparing and approve ACCJC's applications to the USDE for recognition as an accrediting agency, and appear before the National Advisory Committee on Institutional Integrity and Quality (NACIQI) of the USDE.

- Communicate as needed with the staff of the USDE.
- Upon information and belief, present oral summaries of recommended actions as to colleges being considered for accreditation or sanction; make recommendations for action, including increasing sanctions beyond the recommendations of the visiting evaluation teams; communicate with team chairs as deemed necessary.
- Review public complaints against institutions (Policy on Student and Public Complaints Against Institutions); review third party comments submitted to the ACCJC as to institutions; review complaints filed against the ACCJC and participate in analyzing and responding as deemed necessary.
- Approve staff consulting with outside organizations or institutions other than member institutions (Policy on Conflict of Interest)
- Process conflict of interest complaints (Policy on Conflict of Interest)
- Make presentations at, and offer, conferences, workshops, seminars, and other presentations to member institutions, government, and the public on subjects related to accreditation, the role of college governing boards ("effective trusteeship") quality assurance and institutional improvement (Policy on Public Disclosure and Confidentiality in the Accreditation Process)
- Process Whistleblower Complaints filed by ACCJC staff. (WASC Constitution Article VIII)
- Prepare action letters to colleges for which the ACCJC's Commission made a decision.
- Approve or accept reports made by colleges to the ACCJC.
- Notify districts if the Commission decides to find deficiencies which were not identified as deficiencies by a visiting team, and allow response or comment by the college, or citation of procedural error by the college. (Policy on Commission Good Relations With Member Institutions)
- Writing letters to California legislators in or about April 9, 2012, in support of legislation (SB 1456) for, *inter alia*, changing the mission of the California community colleges, and writing letters to California legislators in or about June 2012, in support of legislation (SB 178) to allow "interim chancellors" such as CCSF's interim Chancellor Pamila Fisher, to "double-dip - receive their full retirement compensation and a generous wage payment.
- Communicate directly with Chief Executive Officers of districts and colleges regarding

accreditation matters, and make suggestions, recommendations, and, upon information and belief, issue directives.

- Receive personal notes and other information of volunteer evaluation team members that must be provided to her or shredded under the ACCJC's policy on records destruction, adopted June 7, 2013.
- Represent the ACCJC in meetings with the California legislature.
- Upon information and belief, make suggestions to institutions for individuals to serve as interim high-level administrators (e.g. Chancellors or presidents).
- Assist high-level administrators in regard to legislation to provide them compensation.
- Make decisions when between Commission meetings.
- Issue period reports to the Commission regarding her activities and other matters.
- Write articles on accrediting activities of the ACCJC News, and prepare power point presentations and other materials for ACCJC presentations.

102. As president of ACCJC, Beno is, through her role in Quality Assurance, and Federal regulations, also charged with assuring uniformity of treatment of CCSF with other colleges, to avoid any inconsistency in the application of Commission Standards and Requirements, and to avoid conflicts of interest or the appearance of conflicts of interest, in regard to ACCJC activities. She is also responsible for assuming due process in the evaluation of colleges.

103. President Beno is an official spokesperson for the Commission to institutions and the public. (ACCJC, *Guide to Accreditation for Governing Boards* (Nov. 2012) at 3.) She communicates to the member institutions in regard to sanctions or actions of the USDE toward ACCJC, and other matters.

a. For instance, when the California Legislature's Joint Audit Legislative Committee convened a hearing on August 21, 2013 to consider whether to order an audit of the ACCJC, President Beno wrote to the Chief Executive Officers of every California Community College, asking them to "speak publicly about the benefits of accreditation" because the Commission is "very concerned" that the "voice of the CFT" might be "misunderstood by the public and by legislators as the voice of the California Community Colleges." Beno wrote that the Legislative hearing was "largely fueled by material from the ... (CFT) complaint against the ACCJC." And when former California Community

Colleges Chancellor Jack Scott asked to speak to the Commission at its meeting in January 2010, President Beno wrote to each CEO on January 6, 2010, expressing the Commission's reasons for refusing to allow him to speak to the Commission at its meeting that date. Beno's letter referred to "an unprecedented and serious set of events that are occurring", and noted that Scott would not be allowed an opportunity to address the Commission about reforms he was proposing concerning ACCJC's operations, because the Commission "had not placed the Chancellor's suggestions on its public meeting agenda."

b. Beno has expressed the views of the Commission on matters which have yet to be "decided" by them in an action letter "decision" about a college's accreditation. For example, in her remarks to nearly 100 members of the public and college community at Redwoods on March 26, 2012, and streamed live over the college's network, Beno spoke for the Commission on matters highly relevant to CCSF. The subject was what would happen if Redwoods College were to be disaccredited. She said words to the effect:

> "The college had not done what was required of it, that its promises were 'no good', and that the **Commission had been** too generous with the College ... the 'show cause,' was 'legally impregnable.' **The Commission felt** CR's 'failure' to do what was expected of it could 'harm the Commission in being a reliable authority,' so that the college had to 'do it or get out of the club.'"

She also said, more generally:

> "There is a hypothesis that the State would not let you close ... that if you are taken over by another college, all employees would keep their jobs and, of course, the Commission, once, in Compton, let Compton keep its unions and employees. That has not worked well for El Camino. **The Commission will not do that again**. If you close, you can become an employee under their own processes, **but the Commission will not allow bargaining units to keep their collective bargaining contracts - you get unemployment and a chance to apply for jobs with the new college."** (emphasis added)

104. The ACCJC has been designated by the State Board of Governors of the California Community Colleges ("BOG")—a California state body tasked by the Legislature with setting policy and providing guidance for the 72 community college districts and 112 colleges in California—as the accreditor for the 112 public community colleges in California. (Cal. Code Regs., tit. 5,§ 51016) Thus, every public community college in California—including CCSF—must be accredited by the ACCJC in order to be eligible for state and federal funds.

105. ACCJC has sole and absolute discretion to set the standards by which member

institutions, including all California community colleges, will be evaluated for accreditation and eligibility for state aid. The Commission also has sole and absolute discretion to make decisions on the accreditation status of all member institutions. These decisions are not subject to review by, or appeal to, the State, or any other institution or entity.

ACCJC's Recent Violations of USDE Regulations

2010 Violation

106. In recent years, the USDE has found on three occasions, that ACCJC did not comply with the Secretary's criteria for recognition as a reliable accrediting agency.

107. In 2010, a special task force created by California Community College's Consultation Council filed a complaint with the USDE expressing concerns with various activities of the ACCJC, including the ACCJC's Commissioner selection process. After evaluating the complaints and responsive documentation submitted by the ACCJC, the USDE concluded that the "processes and procedures by which Commissioners [were] selected [did] not meet" federal requirements. (Letter from Kay W. Gilcher, Director, Accreditation Group of U.S. Dep't of Educ., to Barbara A. Beno, President, ACCJC (Aug. 24, 2010) at 1.) Specifically, the USDE concluded that the ACCJC failed to implement "clear and effective controls" to protect against undue influence by the leadership of any related associated, or affiliated trade organization or membership organization (*Id.* at 2) and "against conflict of interest, or the appearance of conflict of interest, in the [Commissioner] selection process." *Id*. at 3, 4.

108. The USDE also took issue with the fact that at five of the nine Commissioner Selection Committee meetings held between 2005 and August of 2010, "the Commission Chair or Vice Chair [was] either a member or ex-officio member of the committee, appointed by the Commission Chair. There was one Commissioner Selection Committee where both the Commission Chair and Vice Chair were members." Id. at 3. The USDE expressed concern that this "could result in [Commissioners] wielding undue influence over the Committee," and hence the Commissioners selection process. *Id*.

109. The ACCJC's bylaws were amended in response.

2012 Violation

110. In 2011-2012, the USDE, on its own accord, reviewed ACCJC and found it failed to comply with the USDE's regulations on giving colleges no more than two years to cure deficiencies,

except for good cause. ACCJC again amended its policies to conform to USDE requirements.

2013 Violation

111. The PLAINTIFFS CFT and AFT Local 2121, and numerous others have filed complaints against the ACCJC in 2013, arising out of ACCJC's actions towards CCSF and other colleges. These complaints are discussed further below. The CFT/AFT 2121 Complaint, nearly 300 pages long, was filed on April 30, 2013, along with nearly 1,000 pages of evidence. This Complaint (herein the April 30th Complaint) alleged numerous violations by ACCJC of Federal requirements, its own policies, and California law, in regard to ACCJC's evaluation of CCSF and issuance of Show Cause to CCSF by letter dated July 2, 2012, as well as violations against all of California's community colleges. On August 13, 2013, the USDE sustained four of CFT's complaints set forth in the April 30th Complaint, but made no specific decision on the remainder. (The USDE letter is set forth as **Exhibit 1** hereto; the entire CFT/AFT 2121 Complaint is posted at www.cft.org along with the supporting evidence, last accessed on August 30, 2013)

CCSF's 2006 Evaluation and Accreditation By ACCJC and its Subsequent Retroactive Recharacterization by ACCJC

112. In 2012 and 2013, the ACCJC placed CCSF on Show Cause sanction, and then disaccredited it, in large measure because the College had allegedly been found to have deficiencies in its re-accreditation in 2006, that subsequently went unremedied for seven years. To make these findings in 2012 and 2103, ACCJC had to retroactively recharacterize CCSF as having satisfied the Standards in 2006 accreditation decision, as not having satisfied the Standards. This action by ACCJC is dishonest, and reveals its lack of integrity, and unlawful and unfair business practices. In engineering this recharacterization so as to sanction and disaccredit CCSF, ACCJC violated its own policies, California law, and Federal regulations which require, *inter alia*, that when found, deficiencies are clearly identified with particularity, and that sanctions are issued.

113. In 2005-2006 CCSF was considered for reaffirmation of accreditation by ACCJC. As required by ACCJC, the College prepared and submitted a lengthy "self study" to ACCJC. (Found at: www.ccsfforward.com/our-progress/key-documents/ , last accessed September 16, 2013.) Next, a 14-person team was appointed by ACCJC, visited CCSF in March 2006, and subsequently issued a lengthy report concerning CCSF in or about April 2006. (See www.ccsfforward.com/our-progress/key-

documents/ ; last accessed September 16, 2013) Based on the "site visit team" evaluation and recommendations, ACCJC reaffirmed CCSF's accreditation in June 2006. The visiting team's detailed report confirmed that they had not observed any *deficiencies* at CCSF:

> "The team recognized that CCSF was 'one of the premier community colleges in the region,' and that the college's activities surrounding the accreditation 'reaffirmed the excellence of the college ...'" (2006 Evaluation Team Report, p. 4.)
>
> "The visiting team validated that *the college meets the eligibility requirements* and *complies with the standards of accreditation*, as required by [the ACCJC]." (March 19, 2006 evaluation team report, p. 4, emphasis added)

114. The 2006 Evaluation Team Report also "developed ... eight (8) recommendations intended to guide the college in *accomplishing certain goals and in assuring the high quality of its programs and services*. Recommendations #2, #3, and #4 are presented as overarching concerns that should receive the college's focused attention and emphasis. The other[s] are also important ... to address ..." (*Id*., pp. 4-5, emphasis added.) Recommendation #2 involved "Student Learning Objectives," #3 involved "Financial Planning and Stability," and #4 involved "Physical Facilities Contingency Plans." Evaluation Team Report, p. 5.

115. When ACCJC accredited CCSF during the 2005-2006 school year, the 2005 version of ACCJC's policies was in effect. ACCJC's "Policy on Commission Actions on Institutions" stated, "In the case that a previously accredited institution cannot demonstrate that it meets the Eligibility Requirements, Accreditation Standards, and Commission policies, the Commission will impose a sanction." (2011 *Accreditation Reference Handbook*, p. 38; 2005 *Handbook*, p.50) But it did not do so in 2006. This proviso, requiring a sanction for any deficiencies detected, has remained continuously in effect. As alleged below, following its 2006 review, ACCJC again examined CCSF in 2007, 2009 and 2010. These examinations were by President Beno and her staff, and resulted in three actions by ACCJC to accept reports filed by CCSF, and letter by Beno which did not identify any deficiencies. The Commission issued no sanctions in 2007, 2009 or 2010. Had CCSF been identified as deficient in 2006, 2007, 2009, or 2010, ACCJC's own policy required it to issue a Sanction and it did not do so. It is unlawful and unfair for ACCJC to recharacterize these events years later in order to justify a sanction. Apart from this base illegality, ACCJC should be estopped from this recharacterization.

116. California common law fair procedure requires fundamental fairness and due process in

actions by non-profit, private accrediting entities such as the ACCJC. A fundamental requirement of such is notice of failings that may lead to significant penalties or consequences, and a fair opporetunity to respond. Had CCSF evidenced deficiencies in Standards in 2006, when ACCJC re-accredited it, ACCJC had a duty to identify deficiencies, and provide an opportunity for CCSF to respond to the accusations.

117. Several Federal regulations also require, as an element of due process by accreditors, that they clearly identify any deficiencies found in an accreditation review (34 CFR § 602.18(e)), provide written specifications of any deficiencies (34 CFR § 602.25(c)), and provide the college with detailed written report that assesses deficiencies. (34 CFR § 602.17(f)). ACCJC violated each of these sections when it recharacterized CCSF as having deficiencies in 2006 and in years prior to its 2012 evaluation of the College.

118. ACCJC advertises itself as an expert, impartial, and objective evaluator of community colleges, which performs its functions in order to assure the quality of education, continuous improvement of education, and to safeguard the right and entitlement of students to a quality education. As an "expert" evaluator, ACCJC owes the students, public and employees of a college a fundamentally fair assessment of colleges. The documentation of ACCJC's action shows that the Commission did not clearly identify or provide specifications of deficiencies for CCSF in its 2006, 2007, 2009 and 2010 letters to CCSF. In retroactively recharacterizing in 2012 what happened in 2006 and after, ACCJC violated its own policies, California law, and Federal regulations, as delineated next with particularity.

ACCJC's 2006 Notice of Reaccreditation and
Follow-Up Reports and Letters by Beno

119. The ACCJC, in a letter to CCSF dated June 29, 2006, notified CCSF that its accreditation had been *reaffirmed*, with a requirement that it complete a Progress Report and a Focused Midterm Report, which "should address all the team's recommendations with special emphasis on" the three noted in Beno's letter. (See www.ccsfforward.com/our-progress/key-documents/ ; last accessed September 16, 2013) The Progress Report was to focus on Recommendation #4, including reducing the percentage of its budget spent on salaries and benefits, and address funding for retiree health benefit costs."

120. The USDE's Guidelines also indicate that the ACCJC's evaluation reports should be

"comprehensive in clearly indicating any/all areas of non-compliance with each of the agency's standards when the institution or program does not meet the agency's expectations." (2012 USDE Guidelines for Recognition, p. 47) The USDE Guidelines also emphasize that ACCJC's written procedures must provide "written specifications" of any deficiencies. (*Id*., p. 77) A specification is "the process of identifying or making specific through the supply of particularizing detail." While ACCJC's policies require that it identify deficiencies, it does not go far enough because the USDE demands written specifications of deficiencies - that is, that deficiencies be identified with particularity. ACCJC's communications with CCSF from 2006 through 2011 did not identify CCSF as having deficiencies, hence no deficiencies were identified with particularity either.

121. The letter President Beno sent to CCSF Chancellor Phillip Day dated June 29, 2006 renewing CCSF's accreditation, never used the term deficiency, and in no way implied ACCJC had found that CCSF was deficient. Instead, the ACCJC unequivocally reaffirmed CCSF's accreditation. ACCJC was aware of how to give notice of a deficiency, as proven by a letter President Beno sent on that exact same day, to Chancellor Susan Carroll of Feather River College, advising that her college had been sanctioned for deficiencies. In that letter, Beno reported that the Commission had:

> "... acted to issue a **Warning** and to ask that Feather River College **correct the deficiencies noted** ... A warning is issued when the Commission finds that an institution has pursued a course of action which deviates from the Commission's eligibility criteria, standards of accreditation, or policy to an extent that raises a concern regarding the ability of the institution to meet accreditation standards ... the institution's accreditation will not be reaffirmed until the conditions which warranted the warning are removed." (Beno to Carroll, June 29, 2006, p. 1)

No such deficiency notification letter was sent to CCSF by ACCJC.

122. In 2007, 2009, and 2010, CCSF submitted requested reports to the ACCJC, each of which was *accepted* by the ACCJC in letters signed by President Beno dated, respectively, June 29, 2007, June 30, 2009, and June 30, 2010. (These letters are also found at www.ccsfforward.com/our-progress/key-documents/ ; last accessed September 16, 2013.) Had ACCJC concluded that CCSF had evidenced deficiencies in meeting ACCJC Standards, Federal law required that ACCJC make this clear to CCSF. Thus, under 34 CFR sections 602.18(e) and 602.25(c) ACCJC is required to provide *clear identification and written specifications of any deficiencies* it identifies to the colleges it accredits. Although ACCJC has on many occasions appointed "interim" site visit teams (e.g. between every 6-year reviews) to evaluate colleges with deficiencies, it did not order any such interim site visit teams to evaluate CCSF

during this period, consistent with the fact that no deficiencies had been identified.

123. ACCJC's failure to clearly identify, detail and specify CCSF's alleged deficiencies in 2006, arose in its 2012 accreditation review and 2013 Show Cause review of CCSF, when ACCJC retroactively asserted CCSF did have deficiencies in 2006.

Retroactive Recharacterization in 2012

124. Six years later, in 2012, while CCSF and ACCJC were in conflict over several issues, in particular the future mission of the California community colleges, ACCJC changed its tune. After ACCJC had evaluated CCSF in Spring 2012, it issued a severe penalty - Show Cause. In its "Show Cause" letter dated July 2, 2012, Commission president Barbara Beno described the two primary reasons as to why CCSF had been placed on Show Cause sanction: First, that it failed to demonstrate it met a significant number of Commission Requirements and Standards, *and second, that it failed for six years to implement recommendations made in 2006. ACCJC was in 2012 retroactively claiming it had identified deficiencies in 2006*.

a. President Beno specifically wrote the following on July 2, 2012:

> "Show Cause was ordered ... because the College has failed to demonstrate that it meets the requirements in a significant number of Eligibility Requirements and Accreditation Standards. <u>It has also failed to implement the eight recommendations of the 2006 evaluation team</u>, five of these eight were only partially addressed and three were completely unaddressed. The College is ... expected to fully address all of the recommendations ... before the next comprehensive evaluation ..." (Show Cause Letter, p. 2, emphasis added)

b. ACCJC unfairly and unlawfully treated these 2006 "recommendations" as concerning CCSF's supposed *deficiencies* in satisfying ACCJC Standards and Eligibility Requirements. To do this, ACCJC retroactively rewrote history, as CCSF was *not* found by the Commission to be deficient in satisfying Standards and Eligibility Requirements in 2006, 2007, 2009, or even in 2010. In order to support its decision announced July 2, 2012 to place CCSF on Show Cause sanction, the ACCJC had to retroactively recharacterize the foregoing history, and now claim that (1) CCSF had been found deficient in 2006, and (2) had thereafter failed to correct these deficiencies. Had ACCJC contemporaneously found CCSF deficient in 2006, or 2007, or 2009, or 2010, it was required to give written notice to CCSF, and inform CCSF it had two years (or more for good cause) to correct those deficiencies. ACCJC issued no such notice. (See USDE letter, August 13, 2013, <u>Exhibit 1</u> hereto, pp. 3-

4)

c. As recently as September 19, 2013, in a press release rebuking California State Superintendent of Public Instruction Tom Torlakson, for expressing his concerns about ACCJC's disaccreditation of CCSF, ACCJC insisted that CCSF had deficiencies in 2006 which had not been remedied in the 7 years since, a false statement offered once again to justify ACCJC's unlawful and unfair disaccreditation of CCSF. Torlakson had written the Commission on September 17, 2013, saying, *inter alia*:

> "I am writing today to emphasize just how vital the Community College of San Francisco (CCSF) is to the San Francisco Bay Area ... CCSF possible closure would have clear negative impacts on our K-12 students and the economic vitality of the San Francisco Bay Area ... Over 63,000 students from the San Francisco Unified School District and South San Francisco Unified School Districts depend upon CCSF to assist them in transferring to four-year institutions, career technical education training, job skills and training, English as a Second Language, and other educational opportunities ... For example, 3,849 San Francisco Unified School District (SFUSD) spring graduates, approximately 1,106 of these enrolled at CSF in the fall of 2011 (29 percent of the graduating class at SFUSD). Students that had planned to obtain job training ... will have to look elsewhere, potentially to more expensive for-profit institutions. CCSF's closure will leave many students discouraged and unsure of how to continue their postsecondary paths. This frustration, and the potential loss of their higher education dream, could increase the dropout rate and lead to higher unemployment ... CCSF offers over 200 low-cot Career Technical Education programs. Students in the middle of their progress would have to find other community colleges to continue their programs. Or worse, they will drop out completely ... Given the recent United States Department Education findings that the City College of San Francisco accreditation review process was flawed, I encourage the Accrediting Commission ... to rescind the college's show cause sanction. Removal of the immediate disaccreditation threat will create a more positive environment. It also will allow interested parties to work together to take necessary steps to ensure CCSF remains open to serve the students and the community." (Torlakson to Amador, Sept. 17, 2013.

In its response the next day, the ACCJC wrote, presumably by its President since no Commission meeting had been scheduled, ACCJC rejected Torlakson's call, saying among other things that it was "Surprised" to receive his letter and that it was "mandated" to disaccredit CCSF by the ACCJC, a flat-out prevarication. ACCJC wrote:

> "The public needs to know that there is a federal regulation that mandates that an accrediting body terminate the accreditation of an institution in noncompliance with any standard or provide a timeframe of no more than two years for the institution to bring itself into compliance. The ACCJC enforced this rule after CCSF had been given far more time and opportunity - up to seven years - to come into compliance ... the Commission's action in June 2013 was based on the evidence ... which showed the college was able to accomplish little over the previous year, was still divided and still did not comply with Accreditation Standards."

125. These comments by ACCJC underscore its reliance on its retroactive recharacterization of the events of 2006 to 2011. Moreover, ACCJC's press release misstates the Commission's 2-year rule (which allows more than 2 years for good cause) and the Federal 2-year rule to the same effect, disregards that CCSF was given just 9 and 1/2 months to come into compliance, ignores that many colleges have been given more than two years, disregards that in exercising its discretion over sanctions, President Beno publicly states to selected audiences, that the Commission has "wiggle room" to sanction or not, or give more time. (for example, Beno announced this at a meeting of the Solano Community College Board of Trustees in 2009, documented in the Board minutes), and that the "division" cited is a reference to differences of opinion expressed in public forums, and discussed further below.

The Differences Between Deficiencies and Recommendations

126. There are and were in 2006, and thereafter, significant differences between *deficiencies* and *recommendations according to ACCJC's own publications* and policies. *Deficiencies* are characterized by a *failure to comply* with a Standard or Requirement. Recommendations made when deficiencies have not been found are *suggestions for quality improvement*, and do *not* reflect an institution's failure to comply with any standards. (See ACCJC's Policy entitled "Rights and Responsibilities of ACCJC and Member Institutions in the Accrediting Process," 2011 ed., Handbook, p. 103. The same distinction appears in the 2012 Handbook, at p. 115) This is the precise language of the Policy, which explains this distinction:

> "The *Commission also has the responsibility to communicate its findings* derived from the site visit to the institution; *ensure that the external Evaluation Report* of Educational Quality and Institutional Effectiveness (formerly Team Report) *identifies and distinguishes clearly between statements directly related to meeting the Accreditation Standards and those representing suggestions for quality improvement ..."* (*Id*., 2011 Policy, Handbook p. 103.)

127. A requirement for institutions to have their accreditation reaffirmed under the ACCJC is that they *meet or exceed the Standards and Eligibility Requirements* of the Commission. (See Policy on Commission Action on Institutions) Since ACCJC did not identify any CCSF deficiencies in 2006, and CCSF was not sanctioned nor given a "two-year notice," and was reaccredited, logic dictates it had no deficiencies. Logic also dictates the conclusion that ACCJC could not require compliance with its 2006 recommendations or order sanctions for its non-compliance with those recommendations, because it can order sanctions only when there are deficiencies that are not corrected. In this case, there were no

deficiencies identified in 2006, and the recommendations were therefore not designed to correct deficiencies. In persisting in mischaracterizing CCSF as having been "deficient" in 2006, ACCJC engages in a lack of integrity and unfairness.

a. *Any recommendations* made to institutions that have had their accreditation reaffirmed are for *suggested quality improvement* purposes only, just as ACCJC's Policy on Rights and Responsibilities says. This truth is confirmed throughout the Commission's policies, which describe the recommendations made to institutions that have been awarded a reaffirmation of accreditation as, "directed at *strengthening the institution, not correcting situations where the institution fails to meet the Eligibility Requirements, Accreditation Standards and Commission Policies*," or as identifying, "a small number of issues, which if not addressed immediately, ***may*** threaten the ability of the institution *to continue to meet* the Eligibility Requirements, Accreditation Standards, and Commission Policies." In a series of reports written in 2007, 2009 and 2010 and submitted to ACCJC, CCSF demonstrated that it gave consideration to each of the eight ACCJC recommendations for improvement, and that it "addressed" each recommendation, determining for the extent to which it would follow any given suggestion, or otherwise "address" the recommendation.

b. The Commission and the two evaluation teams which reviewed CCSF in 2012 and 2013, had been trained by ACCJC, were led by team leaders trained by ACCJC, and the 2012 team included a vice president of ACCJC, John Nixon. Both teams inconsistently ignored the crucial distinction between a Standard which is required and an recommendation for quality improvement.

c. In each review of a college, it is a requirement for reaffirming accreditation that the evaluated institution has been found to meet all Standards and Requirements, verifying that the recommendations issued in these instances do not signal any deficiencies identified in the institution.

128. Federal regulations require an accreditor to provide clear identification and written specifications of any deficiencies in relation to an accreditors standards or requirements. See 34 CFR sections 602.18(e) and 602.25(c) Thus, an accrediting agency must,

> "[Provide] the institution or program with a detailed written report that **clearly identifies any deficiencies** in the institution's or program's **compliance with agency standards**." (34 CFR §602.18 (e), emphasis added.)

As alleged herein, ACCJC policies make clear that deficiencies characterize *a failure to comply with*

Standards or Requirements, and are *distinct from recommendations* for quality improvement. It is beyond question given ACCJC's policies cited herein, that any recommendations made to institutions when their accreditation is reaffirmed can only be for ***suggested improvement purposes only.***

129. With rare exceptions, *every* ACCJC member institution, whether fully accredited or sanctioned for deficiencies, is issued a series of recommendations during their periodic comprehensive evaluation. This is not because every single institution has been found deficient, or non-compliant in some way that recommendations are issued. Rather, this indicates that many of the recommendations that the Commission issues are made *not* to ensure institutions correct deficiencies, but for the purposes of suggesting areas in where an institution can *improve*. This was the case with City College of San Francisco in 2006.

130. In 2006 the Commission's evaluation of CCSF yielded a decision of reaffirmation of accreditation to the institution. No sanctions were imposed, because *no deficiencies* were found. ACCJC's policy clarifies the form of reaccreditation given to CCSF:

> "[The Commission may identify a] small number of issues of some urgency which, if not addressed immediately, *may* threaten the ability of the institution to *continue to meet* the Standards and Requirements."(Emphasis added) (Accreditation Handbook, 2012, Policy on Commission Actions on Institutions, subpart III. Actions on Institutions that are Applicants for Reaffirmation of Accreditation, p. 38)

The ACCJC's recommendations made to CCSF in 2006 were for *quality improvement purposes*, and are distinct from deficiencies that must be corrected in order to comply with ACCJC's Standards and Requirements. ACCJC has consistently and retroactively mischaracterized this since its July 2, 2012 action letter, to the detriment of CCSF, the public, CCSF's students and the employees. This mischaracterization is an unfair and unlawful business practice. These events are a major part - the first point - in the April 30th AFT 2121/CFT Complaint, and the USDE agreed.

131. The USDE's August 13, 2013 Letter to the ACCJC, responding to the April 30, 2013 Complaint, concluded that ACCJC's actions in regard to clearly identifying deficiencies did not satisfy the Secretary's criteria in 34 CFR section 602.18(e). The USDE found,

> "Section 602.18(e) of the Secretary's Criteria for Recognition requires that the agency provide the institution with a detailed written report that clearly identifies any deficiencies in the institution's compliance with the agency's standards. By using the term recommendation to mean both noncompliance with standards and areas for improvement, the agency does not meet the regulatory requirement to provide a detailed written report that clearly identifies any deficiencies in the institution's compliance with the agency's

> standards. This lack of clear identification impacts the agency's ability to provide institutions with adequate due process. The agency must demonstrate that it provides a detailed written report that clearly identifies any deficiencies." (Exhibit 1, August 13, 2013, Gilcher to Beno, p. 4)

132. The ACCJC has, as discussed below, subsequently referred to the USDE determination as a "minor" matter which does not require reversal of the Show Cause or Disaccreditation sanctions. In refusing to vacate its 2012 Show Cause sanction, and the Disaccreditation which rested on the improper Show Cause sanction, the ACCJC has committed unfair and unlawful business practices. In a press release issued on September 18, 2013, the ACCJC again defended its treatment of CCSF as having had deficiencies in 2006, and as having been given seven years to correct them. Responding to criticism from the California State Superintendent of Public Instruction, ACCJC wrote,

> "The public needs to know that there is a federal regulation that mandates that an accrediting body terminate the accreditation of an institution found in noncompliance of any standard or provide a timeframe of no more than years for the institution to bring itself into compliance. The ACCJC enforced this rule after CCSF had been given far more time and opportunity – up to seven years in some cases - to come into compliance." (Press Release. ACCJC Comment on Superintendent Tom Torlakson's Letter, Sept. 18, 2013)

133. In summary, ACCJC knew how to specify deficiencies in 2006, as evidenced by its letter to Feather River and its own policies and other actions. ACCJC has since it became embroiled in a political battle involving legislation and the "Student Success Task Force," described below, retroactively recharacterized its prior actions towards CCSF to justify a rush to judgment, the unconscionable imposition of the death penalty of disaccreditation, that harms 85,000 students, 2,500 employees, and the residents of San Francisco, and which contradicts ACCJC's own mission. ACCJC thus has acted unlawfully and unfairly, according to its policies, California law, and Federal regulations, in recharacterizing in 2012 CCSF as having deficiencies in meeting the Standards in 2006, and then relied repeatedly on this recharacterization to justify Show Cause and Disaccreditation. As we show below, one of the recommendations ACCJC focused on from 2006 involves an extreme financial conflict of interest for ACCJC, in which ACCJC-affiliated individuals (team members, committee members, and commissioners) acted through ACCJC's accreditation authority, to coerce colleges into making millions of dollars in financial contributions to a trust fund they oversaw as trustees.

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Additional Unfair and Unlawful Business Practices in the 2012 ACCJC Evaluation of CCSF

134. ACCJC's retroactive recharacterization of the 2006 ACCJC accreditation of CCSF was just one of the numerous unfair and unlawful business practices engaged in by ACCJC in 2012. These additional practices, both individually and collectively, resulted in the Show Cause sanction and, eventually, disaccreditation. They include, but are not limited to, a conflict of interest involving President Beno and her husband, who served on the 2012 site visit team, an evaluation team which lacked sufficient faculty participation, a conflict of interest over ACCJC's political lobbying to curtail CCSF's mission while the evaluation was underway, another conflict of interest involving ACCJC's evaluation of a criteria which benefitted a trust fund operated by ACCJC commissioners and team members, and a number of procedural errors. We begin with one of the conflicts which directly involved ACCJC's president.

The Conflict of Interest Arising Because President Beno Appointed Her Husband, Peter Crabtree, to the Supposedly Independent and Impartial Site Visit Evaluation Team Which Evaluated CCSF in 2012 - An Unfair and Unlawful Business Practice

135. Peter Crabtree, the husband of President Beno, was placed on the evaluation team which visited CCSF from March 11 to March 15, 2012, and evaluated CCSF's application for renewed accreditation. At the time of this evaluation, President Beno and the ACCJC had already taken sides in a partisan dispute over the future mission of CCSF and other community colleges (discussed in greater detail in the next section of this Complaint), one which pitted ACCJC against CCSF. In fact, as alleged below, just two weeks before the team visit, President Beno had written letters to State legislators, urging their support for a position espoused by ACCJC and the Campaign for College Opportunity, and openly opposed by CCSF, its faculty, labor organizations, trustees and students. There were other conflicts as well, involving ACCJC's entanglement with a trust fund which attempted to persuade California community colleges to invest public funds with it for the purpose of pre-funding future estimated retiree health benefit liabilities.

136. Federal regulations, California law and ACCJC Policies broadly forbid conflicts of interest and the *appearance* of conflicts of interest in evaluations of colleges, and require that evaluation teams be independent of the Commission itself. Such broad rules, designed to assure fairness and

impartiality by the ACCJC, are consistent with the role of accreditors as gatekeepers for the expenditure of millions of dollars in Federal funds to students and institutions, and with the power entrusted to the ACCJC by the State of California, and the USDE, to conduct fair reviews for the benefit of the public good.

a. **Federal regulations.** Federal regulations require that the ACCJC establish and implement guidelines to prevent conflicts of interest or the appearance of conflicts of interest. This requirement is so important to the USDE that it provides for it in multiple regulations. The USDE mandates that a recognized accreditor "has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions." (34 CFR § 602.14(b)(3).

i. The Secretary's regulations also demand that "the agency has – (6) clear and effective controls against conflicts of interest or the appearance of conflicts of interest by the agency's – (i) Board members; (ii) Commissioners; (iii) Evaluation team members; ... (v) Administrative staff; and (vi) Other agency representatives." (34 CFR 602.15(a)(6)).

ii. Further, these regulations require that the Commission itself be independent of the team by "conduct[ing] its own analysis of the self-study and supporting documentation furnished by the institution ... , the report of the on-site review ..." (34 CFR § 602.17(e)).

iii. The USDE's Guidelines for implementing these regulations provide further that an agency must demonstrate "The application of comprehensive and clearly-stated conflict-of-interest guidelines for members of its decision-making body. (Helpful guidelines provide examples ...) (Guideline to 34 CFR § 602.14(b))

iv. The Guidelines to 34 CFR section 602.16(a)(6) indicate that the USDE expects an agency has "policies [that] include areas commonly identified as posing a conflict-of-interest, or the appearance of a conflict-of-interest."

b. **ACCJC Policy**. ACCJC policy specifies that the Commission should, "Make all of its decisions in an atmosphere which avoids even the appearance of conflict of interest ..." ACCJC's "Policy on Conflicts of Interest for Commissioners, Evaluators, Consultants, Administrative Staff, and Other Agency Representatives" (2011 Handbook, pp. 125-127)

i. ACCJC Policy also provides:

"The Commission will not knowingly invite or assign participation in the evaluation of an institution anyone who **has a conflict of interest or the appearance thereof**." *Id*., p. 125.

"The Commission has the responsibility to assure that evaluation team members are impartial, objective and without conflict of interest." (Policy on Rights and Responsibilities of ACCJC and Member Institutions, 2011 Handbook, § D, p. 102, herein the "Rights Policy")

"The Accrediting Commission believes that those who engage in accreditation activities must make *every effort to protect the integrity of accrediting processes* and outcomes." (*Conflicts Policy*)

"Team members have a special **responsibility to maintain the integrity of the evaluation process** and outcomes which enables private, nongovernmental accreditation to meet its goals. Quality assurance to the public and institutional improvement for institutions can only be achieved through the conscious commitment of those who participate." (Team Evaluator Manual, p. 4, 2011 ed., emphasis added)

"Each team is selected to provide experienced, **impartial professionals** appropriate for the institution being evaluated ..." (2011 Team Evaluator Manual, p. 5, emphasis added)

Its Conflicts policy states that the Commission acts to:

"Maintain the credibility of the accreditation process and confidence in its decisions. Assure that decisions are made with fairness and impartiality; **Avoid allegations of undue influence, relationships which might bias deliberations, decisions or actions; and situations which could inhibit an individual's capacity to make objective decisions;** Make all of its decisions which avoids even the appearance of conflict of interest ..." (Policy on Conflicts of Interest, etc., 2011 Accreditation Reference Handbook, p. 129, emphasis added)

ii. ACCJC's Conflicts policy is broadly drafted to cover the appearance of a conflict. The 2011 Conflict of Interest Policy, in place at the time of the CCSF site-visit and Commission action, affirmed that "the intent of the Commission is to ... make all of its decisions in an atmosphere which avoids even the appearance of a conflict of interest." ("Conflict of Interest Policy", 2011 Handbook p. 125)

iii. In a *Special Edition* of the ACCJC *News* published in February 2011, the Commission emphasized that its decisions are "fair and unbiased, and that its evaluation teams are unbiased." It declared that, "team evaluators with a conflict or potential conflict are not permitted to serve on a team, and are removed from an evaluation team" when a conflict is identified. *Id*.

iv. The "Team Selection" process, as described by ACCJC in July 2011, involved "Commission staff develop[ing] the teams from a roster of experienced educators who have exhibited leadership and balanced judgment ... Each team is selected to provide experienced, **impartial professionals** ...” (Team Evaluator Manual, 2011 ed., p. 5)

v. The Commission’s Policy on Public Disclosure, in effect during the 2012 assessment of CCSF, decreed that, “The Commission and the institution should maintain appropriate levels of confidentiality during the various stages ... that lead to the Commission’s decision.” (2010 ed., Policy on Public Disclosure, p. 1)

c. **California law**. As a California nonprofit organization, ACCJC is also required by California’s doctrine of common law fair procedure, to avoid conflicts of interest which affect its activities. See, e.g., *Smith v. Selma Community Hospital* (2008) 164 Cal. App. 4th 1478, 1512; *Mennig v. City Council* (1978) 86 Cal. App. 3d 341, 351; *City of Fairfield v. Superior Court* (1975) 15 Cal. 3d 194, 217. California’s law construes the prohibition against conflicts or appearances of conflicts broadly to include *any interest*, “other than perhaps a remote or minimal interest,” which might influence official duty. See *People v. Honig* (1996) 48 Cal. App.4th 289, 317. These conflicts policies are based upon “[t]he truism that a person cannot serve two masters simultaneously” *Thomson v. Call* (1985) 38 Cal. 3d 633, 637.

137. The on-site evaluation team of “peers” is considered by the ACCJC as crucial to non-governmental accreditation, and the team is given enormous responsibility to gather the evidence and make recommendations. (ACCJC Team Evaluator Manual, p. 3) The Commission itself does not conduct its own investigation into a college’s performance, nor does the Commission gather its own information or evidence. It does not interview the numerous college employees and students who are interviewed by the evaluation team.

138. The Commission relies on the team, including its impartiality, independence and expertise. An evaluation team member is expected to provide “an **independent review** of an institution.” (Team Evaluator Manual, Art. 3.1, 2011 ed.) The team too “provides an independent peer review of an institution.” *Id*., p. 6) Evaluators “must also be analytic and use evidentiary materials, have strong interpersonal skills, be able to **apply Accreditation Standards to institutions objectively**, ... and work well as members of the team.” (ACCJC *News*, Special Edition, February 2011, p. 6, emphasis added) “In short, **the evaluator must be diagnostic, impartial**, and ultimately, able to make

recommendations for improvement to the institution." (Team Evaluator Manual, 2011 Ed., p. 9)

139. Mr. Crabtree, an administrator in the Peralta Community College District, had rarely served on ACCJC evaluation teams. His last team service apparently had been in 2006, when he served on the team for Kapi'olani Community College in Hawaii. Before that he had served on the 2004 team for the Sunnyvale campus of the private Brooks College, and in 2002 he had been on the team evaluating San Joaquin-Delta Community College. In other words, it had apparently been 10 years since he had served on an ACCJC team evaluating a California community college.

140. ACCJC's established practice is to provide evaluation teams with background information about a college they are about to evaluate. The ACCJC holds a one-day long team training session for teams. Ordinarily, two to three teams attend a session together. Many of these sessions are held in Novato, at the Commission's offices. The training for the CCSF team was held on February 7, 2012 in Novato. Presumably Mr. Crabtree did his duty and attended the training session.

141. In preparation for the team visit, the team members, as a matter of policy, are provided copies of the college's self study report, and other documents including the last ACCJC team evaluation, and the various reports and letters which resulted. This means that it was reasonable for the ACCJC to expect that Crabtree would familiarize himself with the ACCJC's 2006 evaluation and four letters from ACCJC to CCSF, written by President Beno between 2006 and 2010, which referred to various recommendations ACCJC had given to CCSF in 2006. That he did so is confirmed by the team's Report, which states that:

> "The team made extensive efforts to prepare for the visit ... Prior to the team visit, team members carefully read the college's self-evaluation and related documents, including the recommendations of the previous accreditation evaluation team that visited the college in 2006." Team Report, p. 3.

When Mr. Crabtree was appointed, and later when he prepared for the visit, it would have been known to the Commission's staff, and President Beno, that Mr. Crabtree would receive any letters written from the ACCJC (Beno) to CCSF concerning its accreditation status, and responses to CCSF reports.

142. As a member of the CCSF evaluation team, Mr. Crabtree was therefore called upon to review, weigh and rely on assessments, concerns and directives written in these four letters by his wife about CCSF.

143. The Commission's retroactive recharacterization in 2012 of the 2006 recommendations,

which involved these four letters written by President Beno, was a principal reason for the Show Cause decision and, later, disaccreditation. Mr. Crabtree was responsible for reading and digesting the contents of those four letters written *by his wife*, in the context of CCSF's "response" to ACCJC's recommendations.

144. It should have been readily apparent to Beno and her vice presidents, and to Crabtree as well, that due to the spousal relationship between Crabtree and Beno, as well as the then boiling dispute between CCSF and ACCJC (represented by Beno) that there was an actual or apparent conflict in Crabtree's participation on the CCSF evaluation team.

145. Beno announced, prior to the filing of the AFT 2121 Complaint, during a public meeting at CCSF after it was placed on Show Cause, that the Commission "operates with the principle of perceived conflict. If anyone perceives you could have a conflict, our commissioners ... step out of a decision." Notwithstanding these policies and procedures, and this statement, Beno, the staff, the Commission, and Mr. Crabtree disregarded the actual, apparent or perceived conflict of interest.

146. The ACCJC-appointed evaluation team visited CCSF from March 11 - 15, 2012. Crabtree had an important role on the team When the team assembled in San Francisco for the first time, at the Handlery Hotel, the team members went through the formality of introducing each other, even though a few came from the same college. When Crabtree introduced himself, upon information and belief, he did not mention he was married to the Commission president. The team, following ACCJC practice, met before the visit ended to decide on an "action" recommendation, which could range from Accreditation to Show Cause. No record of the team's recommendation has been released to the public by the ACCJC. However, upon information and belief, the team discussed a sanction of warning and/or probation, but ultimately did not issue an action recommendation, following a statement by a team member - an administrator - that the action should be left entirely to the Commission. ACCJC policy calls, however, for an action recommendation to be determined and signed by the team members.

147. Mr. Crabtree had an important role on the 2012 site-visit evaluation team. He was assigned to Standard II - Student Learning Programs and Services, and Standard III - Resources. His assignment to "Standard II - Instructional Programs - CTE" included the controversial subject of "student learning outcomes," an area in which his wife has been extensively involved on behalf of

ACCJC. Ultimately, the Team's report concluded that CCSF did not meet Standard II, but its assessment of Student Learning Outcomes was done in such a manner as to violate Federal regulations, and be unreasonable, arbitrary and capricious, as discussed below. Crabtree met with the CCSF Department Chairs Council (one of five team members who did so), the CCSF Board of Trustees (along with three other team members), privately with the Vice Chancellor of Administration and Finance, privately with Peter Goldstein, CCSF's Vice Chancellor for Administration and Finance, David Liggett of Facilities, and Kristie Charling of Grants; the Vice Chancellor of Academic Affairs (the only team member scheduled to meet her), the Dean of Curriculum (the only team member to meet him), the Architecture Chair, the Engineering Chair, the CTE Coordinator, the Business Department Chair, the Computer Science Chair, the Computer Networking Chair, the English Department Chair.

a. Mr. Crabtree was scheduled to, and apparently visited the main Ocean Campus, as well as Mission, Evans, Southeast and Airport, a total of five campuses. Only two or three team members visited three or more campuses. Mr. Crabtree appears to have been assigned to more meetings and activities than any other team member, save one.

b. Mr. Crabtree was assigned to review CCSF's compliance with Standard II - Student Learning Programs and Services, for the Technical Education programs; and Standard III - Resources, in regard to Physical Resources. Student Learning Outcomes have been ACCJC's and Ms. Beno's crusade for the last decade. Standard III - Resources, was one of the Standards which had a substantial impact on CCSF's being sanctioned.

c. During the period in which draft reports were circulated after the visit to CCSF, upon information and belief, Crabtree strongly suggested changes to make the final report more critical of CCSF; presumptively, because of the actual or apparent conflict, these changes came from his wife, President Beno. The final report, upon information and belief, included these negative changes in the team's evaluation of CCSF.

d. Beno and her staff review the team evaluations before they are finalized as part of the "Qaulity Assurance" process and Crabtree presumptively would have been aware of her opinions and she of his, regarding CCSF. Thus, Beno would have been aware that, unlike the typical and expected review, she was reviewing the opinions, analysis and judgment of her husband. In her Quality

Assurance role, and in given advice to the Commission itself when it meets to decide, this aspect presumptively altered the "laboratory conditions" which should be maintained at the Commission level.

e. Crabtree could not fairly, impartially, consistently and independently evaluate CCSF due to his spousal relationship with President Beno.

f. Crabtree and Beno should have been on-guard and particularly sensitive to this conflict or appearance given the broad Federal and Commission regulations and policies aimed at avoiding such conflicts or appearances, and in light of the fact that in 2005 the Chancellor of the Peralta Community College District, Elihu Harris, had accused Beno and Crabtree of a conflict of interest, in a letter submitted to the USDE, alleging that Crabtree had revealed confidential ACCJC information about a future sanction to be levied against Peralta colleges by the ACCJC, before it was announced to them or publicly. Moreover, in May 2010, then Community Colleges Chancellor Jack Scott accused Beno, alleging that she "handpicked commissioners who tend to support" her views. (Letter, Scott to David Bergeron, May 6, 2010) As a result of this accusation, the Department of Education eventually required ACCJC to take steps to *end the favoritism* in the appointment of commissioners, although many favorites remain on the Commission.

g. Because Beno and Crabtree have different last names, this conflict would not have been readily apparent to everyone on the site-visit team. Crabtree, upon information and belief, did not advise the team that he was Beno's husband. For team members aware of Crabtree's spousal relationship, his opinions may have carried extra weight. For some unaware, had they known, it is equally conceivable they would have carried lesser weight. Presumptively, his presence had an influence on the team's decisions.

h. With Crabtree serving on the Team, and Beno working directly with the Commission in its judgment of CCSF - she typically sits with them during their confidential deliberations and wrote the Show Cause letter of July 2, 2012, and she explained the ACCJC's sanctions to the public - the confidentiality of the two stages of the review, the team review and the Commission decision stage of review, mandated by ACCJC's Policy on Public Disclosure, was presumptively compromised. Had Crabtree not served on the team, Beno's interactions presumptively would have been with the team chair, not a team member such as Crabtree. Thus, Crabtree's presence destroyed the wall which is supposed to exist between the evaluation team and Commission staff. It was as if Beno was on the team.

i. Beno has extraordinary power within the ACCJC. She and her staff are responsible for appointing evaluation team members; she signs every action letter; she conducts training of college trustees and employees throughout the State on accreditation issues; she has authority to initiate investigations of colleges, and appoints investigators; she has expressed opinions about what the Commission intends to do before it has decided or announced decisions (as when she told Redwoods employees, at a public meeting in 2012, that if the college were disaccredited the Commission would insist that every employee be fired.). Given her broad authority, it would be improper for her to serve on the CCSF evaluation team, or any evaluation team, as it would compromise the independent review demanded by 34 CFR § 602.17(e), and fairness. With her husband on the team, Beno presumptively was a member as well.

j. Beno, through her activities as President of the ACCJC and as an advisory board member of the interest group the Campaign for College Opportunity, aggressively supported the recommendations of the Student Success Task Force, and SB 1456 against the interests of CCSF in 2011 and 2012. CCSF was vocal and active in opposition, marching on the State Capitol and vocally objecting at a meeting of the Community College's Board of Governor's on January 9, 2012. Just two weeks after CCSF's appearance at the January 9, 2012 Board of Governor's meeting, ACCJC engaged in lobbying efforts to influence the California Legislature against the position expressed by CCSF. The efforts of City College and other community college constituencies around the state, greatly reduced the effectiveness of the Task Force and SB 1456 as originally envisioned, contrary to the intentions of Beno and the ACCJC. The fight over this policy continued during the time of Crabtree's participation on City College's site-visit and the Commission deliberation on its future. It would not be proper given this circumstance, for ACCJC or Beno to participate in the evaluation of City College. Thus, it was not proper that her husband did.

k. Barbara Beno was "embroiled" in the accreditation of CCSF and other issues which raised conflicts - she had personally endorsed legislation to change the mission of CCSF (discussed *infra*.), had opposed CCSF before the Legislature, and was a member of an organization

(Campaign for College Opportunity), which opposed CCSF's vision of its mission and that of the community colleges. Furthermore, she was embroiled in one of the larger issues involved in the CCSF sanction, its handling of GASB 45 "liabilities," where the Commission was entwined with a JPA which benefitted from its position on GASB 45 (discussed *infra.*). and her agency, the ACCJC, was coercing colleges through the threat of sanctions to join irrevocable trusts, including the CCLC JPA, and deposit precious funds into those trusts at a time when there may have been wiser uses of the money. Any prejudice or bias of Beno's is imputed to Crabtree.

148. The appointment of Peter Crabtree to the CCSF evaluation team, and his participation in the team evaluation, given his spousal relationship, and President Beno's position and activities with the ACCJC, destroyed the independence and impartiality which is demanded of an evaluation review whose conclusions and assessment have such an enormous impact on the future of the College, its students, faculty, other employees, and the residents of San Francisco. As is alleged in greater detail below, the Show Cause sanction caused great and irreparable harm to all. Inclusion of Crabtree constituted an unfair and unlawful business practice, violating Federal regulations (34 CFR §§ 602. CFR § 602.17(e), 34 CFR section 602.16(a)(6), and 34 CFR § 602.14(b)) and the policies of the Commission, which adversely, materially and prejudicially influenced the issuance of Show Cause to CCSF in 2012, and derivatively, the issuance of Disaccreditation in 2013.

149. The April 30th Complaint presented the Crabtree conflict of interest situation to the USDE, in the context of Federal regulations, ACCJC policies and California law. The USDE only discussed its regulations. In its August 13, 2013 letter, the USDE concluded that ACCJC's placing Crabtree on this team constituted at least an appearance of conflict, which precluded the USDE from finding that ACCJC satisfies the requirements of 34 CFR sections 602.14(a)(3), 602.15 (a)(6), 602.18(c) and 602.20(a), and indicated that ACCJC "must demonstrate that it has clear and effective controls against conflict of interest and the appearance of conflict of interest." USDE publicly announced it had no authority to reverse an accreditor's decisions, however. PLAINTIFFS AFT 2121 and CFT subsequently asked ACCJC to rescind Show Cause and Disaccreditation, but ACCJC has refused.

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ACCJC's Evaluation Teams, Including Those Evaluating CCSF, Are Appointed in Violation of Its Own Policy and Federal Regulations Because They Have Very Few Faculty Members. The ACCJC Appointment and Reliance on These Teams Constitutes Unfair and Unlawful Business Practices

150. This section of the Complaint discusses the ACCJC's unfair and unlawful business practices in regard to its appointment of site-visit evaluation teams which do not comply with ACCJC policy, fairness, or Federal regulations; and in particular, the team of "peers" appointed by ACCJC to evaluate CCSF in 2012. The team which evaluated CCSF in April 2013 was also out of compliance, as discussed below in the "Disaccreditation section" of this Complaint.

151. Fairness dictates that faculty should play a **central role** in the assessment of institution for accreditation purposes. After all, faculty deliver the academic services to students: they do the teaching, provide the counseling, and operate the library. They are the college personnel principally involved in delivering academic services to students. This role is also recognized by Federal regulations, as discussed below.

152. The "Team Selection" process, as described by ACCJC in July 2011, is supposed to involve "Commission staff develop[ing] the teams from a roster of experienced educators who have exhibited leadership and balanced judgment ... Each team is selected to provide experienced, **impartial professionals** ... The Commission seeks a balance of experienced and first time evaluators ..." (Team Evaluator Manual, 2011 ed., p. 5, emphasis added)

The Manual also states,

> "**The ACCJC staff develops the peer evaluation teams from a roster of experienced educators** who have exhibited leadership and balanced judgment. Typically a team has several faculty members, academic and student services administrators, a chief executive officer, a trustee, a business officer, and individuals with expertise and/or experience in learning resources, distance/correspondence education, planning, research, and evaluation." (Team Evaluator Manual, p. 3, section 2.3. emphasis added)

153. ACCJC policy acknowledges that faculty peers are expected to be at the heart of accreditation evaluation:

a. ACCJC's Bylaws declare that the purpose of the Commission is to assure "the educational community, the general public, and other ... agencies" that the college merits accreditation, through, inter alia, "**period evaluation of institutional quality by qualified peer professionals.**" (ACCJC Bylaws, Article I (Purpose), Section 2 (Purpose), p. 1, emphasis added.)

b. The Commission's "Statement on the Benefits of Accreditation" identifies peer evaluation as a critical element: "The Commissions accreditation process is a **collegial process of peer review**." *Statement of the Benefits of Accreditation*, Statement Elements, adopted June 20-04, Revised January 2011, Edited June and August, 2012, emphasis added. This Statement also mentions that "**voluntary participation in peer review**" offers a guard against "external encroachment harmful to institutional quality," and provides schools with "an enhanced reputation." (Id. p. 2)

c. ACCJC's Team Evaluator Manuals state that the evaluation teams are supposed to consist of the **"peers** of those working in the colleges." (Team Evaluator Manual, 2001 ed., p.2, 2011; 2012 ed., p. 2) This has long been ACCJC policy - the 1997 ACCJC "Handbook for Evaluators," states that "**The evaluation team, all professional peers** ... offer independent insights based on careful analysis ..." (1997 Handbook for Evaluators, p. i.)

d. The current and predecessor Team Evaluator Manuals similarly confirm that:

> "The External Evaluation team, made up of *professional peers* who volunteer their services, offers *independent insights* based on careful analysis ..." (Team Evaluator Manual, p.2, 2011 and 2012 ed.)

The Team Evaluator Manual describes the importance of peer assessment:

> "The accreditation paradigm includes ... Assessment of the self-evaluation and the institution against the Accreditation Standards by **external, peer reviewers** with recommendations to the institution and the Commission." *(Id.*, emphasis added.)

154. These ACCJC policies are consistent with Federal law in that they generally acknowledge the large role of peers. However, ACCJC's policies overall are inconsistent with Federal requirements in that they offer no "specific policy on the composition of on-site evaluation teams." (USDE Letter, August 13, 2013, p. 1, <u>Exhibit 1</u> hereto.) The USDE letter found that ACCJC was not in compliance with 34 CFR section 602.13(a)(3) which requires academic personnel, not just administrative personnel, on accrediting teams, and that this "criterion expects a good faith effort by the agency to have both academic and administrative personnel reasonably represented" and that a team with one academician on a team composed of eight individuals was not "reasonable representation." The 2012 team had 17 people on it, and only 3 were non-administrative employees, with just one teacher. As explained elsewhere, the 2013 team had only one teacher out of 10 members.

155. In 34 CFR section 602.15(a)(3), the Secretary requires that ACCJC-appointed evaluation

teams be fairly and reasonably representative of the various constituencies in a community college by having academic and administrative personnel.

a. As the 2012 USDE Guidelines explain, the Secretary:

> "... looks to see if the agency **discussed and demonstrated**, as appropriate, aspects such as -
>
> • How the institutional accrediting agency's evaluation, policy and decision-making bodies ... are **selected and composed of a mix of qualified academic and administrative personnel**, as appropriate to the agency's recognized scope.
> • How the agency **ensures through written policies and procedures that both academic and administrative personnel are consistently included on evaluation, policy** and decision-making **bodies**.
> • The agency's appointment and/or nomination process and definitions it uses for soliciting academics and administrators.
> • How the agency's evaluation and decision-making process includes the breadth of academic expertise to ensure assessment of the non-degree vocational-technical educational programs offered by, primarily, vocational-technical institutions."
> (Guidance Guide, 2012 Ed., Section 602.15(a)(3), (4), p. 25)

b. The Guideline further provides as to these same regulations a requirement of agencies which composes small teams of two or three persons, as ACCJC sometimes does:

> "However, when evaluating an accrediting agency with few decision-makers or **one that composes site teams of only two or three persons**, it is important that the agency demonstrate its **consistent appointment of individuals**, appropriate to the type of program or institution being evaluated, **who clearly fulfill all the representative categories required by the statute and regulations** which, *under usual circumstances*, means a single individual fulfills one defined category/role at a time.(2012 USDE Guidance, p. 24)

156. In 34 CFR section 602.15(a)(6) the USDE requires that an accreditor have "clear and effective controls against conflicts of interest," or their appearance, by the agency's commissioners, evaluation team members and staff. And 34 CFR section 602.21(b)(4) requires that an accreditor "involve all of an agency's relevant constituencies in the review and afford them a meaningful opportunity to provide input into the review."

157. The ACCJC's staff's method of recruiting and vetting members of teams has the effect of minimizing the numbers of faculty evaluators whom ACCJC considers to be qualified to serve as team members. ACCJC's practices have meant that faculty who are interested in serving on teams must contact President Beno, and provide a letter of recommendation from the faculty member's president or chancellor. This process places barriers in front of more faculty participation.

158. The evaluation teams always have a chair, and the chair is almost always a high-level

administrator. Within each team, separate sub-groups are often created to look at particular standards or issues, such as "fiscal resources and stability." ACCJC's practice is to almost always appoint administrators to lead these subgroups. This has the effect of preventing faculty team members from having significant input into evaluation of fiscal resources or stability.

159. Upon information and belief, it was sometime in the Winter of 2011-2012, that ACCJC's staff, under the direction of President Beno, appointed a "visiting team" to evaluate CCSF. Also based on information and belief, teams are customarily proposed or selected by ACCJC Vice President Garmon Jack Pond and reviewed and approved by Beno, from volunteers approved by Beno.

160. The team which ACCJC appointed to evaluate CCSF for re-accreditation included, as noted above, 17 individuals, of whom *only 3 were faculty members, only one of which was a teacher,* 13 were administrators and one was a college trustee. As a consequence, the team was not a fairly constituted team of peer evaluators. The composition of this team therefore was not in compliance with USDE regulations or ACCJC policy. The CCSF team's administrators included one college chancellor, one college president, two vice presidents, one vice chancellor, another assistant vice chancellor, six deans, and one program director. The team chair was Sandra Serrano, the Chancellor of Kern Community College District. As stated above, one of the deans was President Beno's husband. Peter Crabtree.

161. For at least the last 10 years under President Beno's leadership, the ACCJC has a pervasive unfair and illegal practice of "stacking" evaluation teams with mostly administrators, and generally relegating faculty to minor or limited roles in the evaluation process. ACCJC's written commitment to peer review is belied by its contrary practice. President Beno, who is in charge of the staff and the selection of team members, is responsible. And the commissioners who have looked the other way while this has happened are equally responsible for this.

162. Over the last approximate 10 years, about 75 percent of the membership of evaluation teams for the California community colleges have been composed of managers, administrators and board members, yet they represent less than 3% of the "workforce" of the community colleges. And faculty, who represent 75% of the workforce, have represented just about 23% of the teams. The administrators include presidents, vice presidents, chancellors and vice chancellors. Like ACCJC's president Beno,

some of these have never worked for a California community college as tenured instructors. This disproportionate representation brings administrator's own perspective and interests to the forefront of the ACCJC's accreditation review, and minimize that of faculty.

163. In more than 200 evaluation teams for whom information is readily available on the internet, not one team had a majority of faculty evaluators. Moreover, every team chair has been a manager, trustee, Commissioner of the ACCJC or staff member of the ACCJC, and most assistant chairs are either administrators or assistants to the team chair at the college where she or he is employed. Sometimes the teams divide up the "Standards" for evaluation by a subgroup of the team. Rarely, if ever, is a faculty member placed in charge of such subgroups.

164. While President Beno has publicly declared that every team has a faculty member, this is not true. For example:

a. Solano Community College. Three evaluation teams, which reviewed Solano Community College over the period of 2009 to 2012, were compiled in violation of 602.15(a)(3) and (4). Solano was placed on Show Cause sanction in a notice letter dated January 2009 (corrected on February 3, 2009). A four-person Show Cause team visited the college on April 27, 2009. Each member was a high-level manager: John Nixon, a Commissioner and the President of Mt. San Antonio CCD; Vince Brown, the Vice President of Human Resources at San Joaquin Delta Community College; Jon Stephens, Vice President of Business Services, San Joaquin Delta; and Ron Taylor, President of Feather River College.

i. The manager-only team investigated conclusions from the ACCJC's 2009 Action Letter and an earlier evaluation report, that the college had deficiencies in several areas. These were Governing Board (Eligibility Requirement 3), Chief Executive Officer (Eligibility Requirement 4), Administrative Capacity (Eligibility Requirement 17), Financial Resources and Accountability (Eligibility Requirement 17 and 19).

ii. Another team visited Solano on October 29, 2009. It had just two members. Its leader was Commissioner John Nixon (he was also the President of Mt. San Antonio College) and Jon Stephens (the Vice President, Business, San Joaquin Delta College).

iii. A third team visited Solano in November 2010, and also had just two members. It was again led by Commissioner John Nixon and Ron Taylor, the President of, Feather River College.

b. Cuesta Community College. Between 2008 and 2013, Cuesta College was evaluated by four teams appointed by ACCJC. Three of these teams lacked any teachers, and each had two administrators.

i. A visiting team evaluated Cuesta in October 2008. It had 8 administrators and three faculty. The college was placed on Warning on February 3, 2009, ordered to submit a Follow-Up Report and to plan on a follow-up visit. A follow-up team visit occurred on October 27, 2009. ACCJC appointed a team with just two administrator members: Frances White, the Supt./Pres. of the College of Marin and Andreea Serban, Supt./Prea. of Santa Barbara City College.

ii. After reviewing the Report by White and Serban, ACCJC placed Cuesta on Probation. (Jan. 29, 2010, Action letter, Beno to Stork) The Probationary sanction cited 7 deficiencies. It ordered another report be filed, gave Cuesta two years to correct the deficiencies, and indicated there would be another visit.

iii. On November 5, 2010, a another two-person team appointed by ACCJC visited the college. Again, there were no faculty. It consisted of Andreea Serban, Supt./Pres. of Santa Barbara City College, and a senior research analyst at American River College. Their Report was issued soon after, and was followed by another visit.

iv. A team consisting again of Andreea Serban, and this time Lisa Conyer, the Vice President for Academic Affairs at Moreno Valley College, visited Cuesta on November 10, 2011. Although ACCJC also claims it moves reviewers around, President Serban led or served on four straight Cuesta College teams.

v. ACCJC placed Cuesta on Show Cause in a letter dated Feb. 1, 2012. This was followed by a Show Cause team visit on October 29-30, 2012. The team ACCJC appointed had just five members - and, once again, no faculty. It was led by Raul Rodriguez, Chancellor of Rancho Santiago, and included Cathie Browning (Information Technology Assistant at American River College), Lisa Conyers (Dean of Business, Mt. San Jacinto), Sara Lundquist (VP of Student Svc. at Santa Ana College), and Nick Real, the Instructional Dean - Technology Division at Cerritos College. In other words, four administrators, and one classified employee.

vi. In summary, of four team visits over a period of four years, ACCJC appointed no faculty to the teams.

165. Under 34 CFR section 602.21(b)(4), ACCJC's review of an institution is required to involve "all of the agency's relevant constituencies in the review and affords them a *meaningful opportunity to provide input into the review*." However, by facilitating overwhelming managerial/administrator domination of the evaluation process, ACCJC violates this provision. Furthermore, its team appointment practices violate 34 CFR section 602.15(a)(3) and (6).

166. ACCJC's administrative bias continually informs the adoption and implementation of Standards and Requirements, and adversely affected the evaluation of CCSF and other colleges. By causing and perpetuating this disproportionate administrative domination of evaluation teams, ACCJC has a conflict of interest or the appearance of a conflict of interest. This conflict results from the fact that the evaluation teams are mostly composed of administrative employees, who then advance their own interests at the expense of the students, employees and public. This conflict of interest or appearance of a conflict, violates 34 CFR section 602.15 (a)(6), which requires that ACCJC to have "[c]lear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's - (ii) Commissioners; (iii) Evaluation team members ... (v) Administrative staff." There do not appear to be any effective controls.

The ACCJC's Appointment of Teams With Few Faculty Members Is Unfair and Unlawful - It Violates 34 CFR Section 602.23(a)

167. The administrative bias which permeates the ACCJC exists in part because of illegal and unfair business practices. ACCJC selects evaluation team members by its staff exercising total discretion in an atmosphere of secrecy. It has adopted policies which severely restrict the pool of available faculty for evaluation teams. Foremost are the rules which require faculty to be **nominated or approved by managers** at colleges where they are employed.

168. ACCJC's detailed Accreditation Reference Handbook, and its Team Evaluator Manual, make no mention of ACCJC's process for selecting teams. Rather, *team selection is the result of underground policies* and mostly unwritten practices, which assure perpetual administrative domination of evaluation. As underground policies, they violate Federal requirements that ACCJC's procedures be

published for the benefit of the public. Thus, 34 CFR section 602.23(a) requires that, "written materials describing" the "standards and *procedures* it uses" must be available to the public. As to the various "underground" standards and criteria used by ACCJC in evaluating CCSF and other institutions, the ACCJC intended these unpublished or underground standards and criteria to apply generally, and they elected to use these criteria to interpret, make specific or implement its Standards and policies.

169. The selection process is arranged by the staff ACCJC, most of whom formerly worked as community college managers. Because the selection process results from underground regulations, which are not set forth in ACCJC policies and manuals, and is implemented by former managers, it is far easier for these discriminatory practices to perpetuate themselves. Prior to September 2012, ACCJC required a signed, letter of recommendation from the college president where the faculty member works, to qualify a faculty member as eligible for participation on an evaluation team. ("The ACCJC Visiting Team: Details, Details, Details," ASCCC *Rostrum*, September 2012, by Michelle Hillman.) (Last accessed on August 27, 2013 at: http://www.asccc.org/content/accjc-visiting-team-details-details-details)

170. In 34 CFR section 602.23(a) the USDE requires that ACCJC must "maintain and make available to the public written materials describing – ... [t]he standards and *procedures* it uses to determine" the accreditation decisions it makes. This requirement is violated by ACCJC's underground regulations: (1) appointing mostly administrators to teams; (2) appointing only administrators to many special teams such as Follow-Up teams; (3) generally appointing only administrators as team chairs; and, (4) generally appointing only administrators to lead specialized teams for Standards and Eligibility Requirements, or parts of Standards.

171. After apparently years of complaints, ACCJC barely opened the door a crack by eliminating in Fall 2012, the need for a *signed letter of recommendation*, and replacing it with a chancellor or resident's required *signature on a form to nominate a faculty member*. *Id*. That is, college managers remain the gatekeepers to faculty participation. Sort of like how integration of colleges and universities was stalled for many decades, for women and minority faculty, not to mention students.

172. Through these unfair and illegal rules, the ACCJC assures that teams remain dominated by management and administrators, and that union members or representatives are virtually never appointed to teams.

173. ACCJC must "maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education ... and relevant to the educational needs of students." (34 CFR section 602.21**).** Also, ACCJC must demonstrate its program of review is "comprehensive," "regular," examines "each of the agency's standards and the standards as a whole," and "Involves all of the [ACCJC's] relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review." (34 CFR 602.21(b)(4)) In maintaining a practice of administrator domination of the Commission and its evaluation teams, ACCJC violates this regulation.

174. Management domination plays a role in many of the criticisms, and sanctions, received by California community colleges. This is because the Commission staff - *dominated by managers* - and the Commission itself - *dominated by managers* - have used the assessment process to select teams *dominated by managers*, who have advanced *managerial objectives* which are not accurate indicators of academic quality or the Federal standards. Nor, as we show below, do they actually satisfy ACCJC's additional Policies. Or, they involve so-called Standards which are:

- not widely accepted as required by law. See 34 C.F.R. §602.13 mandating that "standards, policies, procedures and decisions to grant or deny accreditation are widely accepted by" educators, educational institutions, and other accrediting bodies.
- not consistently applied by ACCJC. See 34 CFR §602.18, which demands that ACCJC and similar bodies have "effective controls against the 'inconsistent application of the agency's standards,' and that it 'must consistently apply and enforce standards that respect the stated mission of the institution.'"
- not clearly and published. See 34 CFR § 602.18 (c), which requires that reviews must be based on published standards; 34 CFR § 602.23 (a) requires that ACCJC must "maintain and make available to the public, written materials describing...the standards and *procedures* it uses to determine" the accreditation decisions it makes. (Emphasis added). 34 CFR § 602.13 requires that accreditation procedures must be widely accepted. And 34 CFR § 602.15(a)(6) requires ACCJC have "Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's–(i) Board members, (ii) Commissioners, (iii) Evaluation team members ... (v) Administrative Staff ..."

175. ACCJC's administrative bias and actual or apparent conflict of interest resulting therefrom, means that the ACCJC cannot fulfill its role as an impartial and objective evaluator and accreditor, as demanded by Federal regulations. 34 CFR part 602. After all, unlike the other regional accrediting agencies recognized by the USDE, the subset of colleges and hence available administrative evaluators is comparably small. Given the interconnectedness of the ACCJC with a number of administrative and management trade associations - the Community College League of California, the CEO's Association, the Association of California Community College Administrators, etc. - the same administrators keep showing up on teams. As a result, teams are stacked in favor of administrative views such as reducing the impact of "shared governance" and collective bargaining, and of trustees, to magnify the interests of administrators, at the expense of the students, academic employees and teachers in particular. This will not change until the Commission ceases the illegal stacking of evaluation teams, and ceases its unfair and illegal practices associated therewith, and establishes a means of fostering true peer evaluation as required by law and fairness.

176. By assuring management's domination of the evaluation process, ACCJC has grown more extreme in its actions, committing more unfair and unlawful business practices, and thereby acting contrary to the interests of students, faculty, staff and the public.

Harm, Undue Influence and Anti-Competitive Effects on Faculty and Employee Compensation and Working Conditions, Resulting from Administrators Dominating the Evaluation Process and ACCJC's Accreditation Policies and Practices

177. ACCJC has been engaged in unfair, unlawful and anti-competitive business practices, by displacing competition in the employment and compensation of community college employees and faculty by imposing a scheme of restraints which have the purpose and effect of fixing, artificially depressing, and standardizing rank-and-file academic employee compensation and other terms of employment. ACCJC accreditation Standards, on their face and as applied by ACCJC, have imposed, and continue to impose, significant obstacles to the opportunity for employees and faculty, through their labor organizations, to negotiate fair and competitive wages and benefits. ACCJC practices which restrict the number of faculty eligible to participate as evaluators on ACCJC evaluation teams, and which result in the domination and excessive influence of administrators on these teams at the expense

of faculty peers, are anti-competitive, unlawful and unfair business practices which impose obstacles to the fair determination of faculty pay through the collective bargaining requirements of the Educational Employment Relations Act. Similarly, ACCJC practices in regard to the creation of evaluation teams, such as almost always designating high-level administrators as team leaders, assigning principal responsibility to "investigate" the Standards and their elements, to administrators, and as described further above, have the same anti-competitive effects. These anti-competitive initiatives are furthered by a Commission which historically has been dominated by administrators. The Commission membership during the last two years has generally seen approximately 13 to 14 of the 19 commissioners serving as administrators or former administrators of colleges.

178. ACCJC's unlawful and unfair anti-competitive practices, have had, and will continue to have, adverse effects on the general public. Community colleges are not effectively able to compete for talent in teaching, or to attract the best teachers, because of the depression in compensation resulting from ACCJC's accreditation-related practices complained of herein. As a result, teachers go to work for private institutions, or leave the educational field altogether. The consuming public - students of California community colleges and prospective students, ultimately suffers because there is less quality teaching. These anti-competitive effects as applied to CCSF, including but not limited to the pay cuts imposed for 2012-2013 and 2013-2014, will have the same adverse impacts on the public unless ACCJC's decision to disaccredit is reversed, and the compensation lost as a result of ACCJC's conduct is reinstated.

179. ACCJC's anti-competitive practices include, but are not limited to, the following:

a. ACCJC directly reviews collective bargaining agreements during its evaluations, particularly for employee compensation, with the purpose of fixing and reducing wages and benefits it considers "too high."

b. ACCJC has indicated to community colleges and employers that they must reduce wages and benefits, and sometimes recent compensation agreements, if the college is to avoid sanctions, even disaccreditation.

c. ACCJC insists on reduction in the overall level of compensation as a percentage of the unrestricted general fund of districts, as a condition of accreditation and, to avoid sanctions.

d. ACCJC indicates to colleges that they should engage in financial management by limiting employee compensation to approximately 83 percent of the unrestricted general fund budget.

e. In furtherance of these practices, ACCJC has informed colleges that they may need to reduce or rescind pay and benefit improvements.

f. ACCJC advised CCSF in its accreditation review in 2012 and 2013, that the College paid a percentage of its budget for employee compensation that was excessive. In fact, it was not excessive. In response to this ACCJC's use of this criteria to find CCSF deficient in fiscal resources, CCSF first attempted to negotiate, and then peremptorily and unilaterally, reduced employee compensation as alleged above, for 2011-2012 and 2012-2013. ACCJC's demand meant that funds would unnecessarily no longer be available for personnel costs, but instead would be reserved even by insisting on a reserve above the State minimum requirement of 5%, thus flouting the purpose behind Proposition A on the November 2012 election ballot and depressing faculty and other employee compensation. Faculty suffered aggregate losses of pay exceeding $ 9.5 million for 2012-2013 and 2013-2014, as a result of these pay cuts. The 4.4 percent pay cut in 2012-2013 cost the faculty, in the aggregate, about $4.4 million; the 5% pay cut for 2013-2014 cost the faculty, in the aggregate, about $5 million.

180. The disparity between the numbers of faculty and administrators serving on evaluation teams works to the unfair and unlawful disadvantage of faculty employees, as opposed to administrative and managerial employees, and is anti-competitive because it benefits administrators at the expense of faculty. This administrative dominance has resulted, and continues to cause, numerous unfair and unlawful actions which adversely affect faculty, including but not limited to the following:

a. ACCJC insisted in issuing the Show Cause sanction to CCSF in order to coerce the College into abandoning it's long-standing governance structure under which supervisory division chairs had principal responsibility for administering the college's departments and divisions. As a condition of continued accreditation, ACCJC demanded that the College hire a group of highly-compensated administrators to perform work previously performed by the supervisory department chairs. In addition, ACCJC insisted that CCSF modify the existing governance structure, even though it comported with the model established by State law in A.B. 1725, and was consistent with the governance structure of most other California community college districts, including those of evaluation team members and colleges whose structure has not been found deficient. In this way, ACCJC's actions were intended to, and had the effect of, diminishing faculty's role in college governance.

b. ACCJC has persistently insisted, in the name of accreditation, that colleges hire more administrators. For example,

> "San Jose City College has experienced very significant administrative turnover and periods of inadequate administrative staffing. The College needs to fully staff an administrative structure that is designed to provide stable leadership and oversight necessary to support the institution's mission and purposes." (Letter, Beno to Treadway, San Jose City College, January 31, 2011, p. 2)

> "The Commission notes that Cuesta College does not have sufficient staff, with appropriate preparation and experience, to provide stable administrative services necessary to support its mission and purpose. The college needs to move expeditiously to fill vacancies and interim/acting positions." (Letter, Beno to Stork, Cuesta College, January 31, 2011, p. 2)

> "The visiting team did not confirm that City College of San Francisco has a sufficient administrative staff with appropriate experience to support the necessary services for an institution of its size, mission, and purpose. The organizational structure and staffing is fluid, and administrative oversight is unsettled." (2012 CCSF Evaluation Report, p. 16)

By using accreditation, ACCJC impelled CCSF to hire approximately 16 to 18 new deans, to supplant work previously performed by department chairs, and reduce the funds available for employee salaries.

c. ACCJC has been critical of college governing boards in general, for supposedly "micro-managing" colleges. It has insisted that Boards limit themselves to adopting vague policies, allowing administrators free reign over most operational decisions. In so doing, ACCJC has disregarded California public policy and laws which require governing boards to be involved in, and act on, issues in which they serve as fiduciaries, or have a responsibility, such as to assure that college policies respect California law on freedom of speech.

d. ACCJC has also attempted to reduce communications between governing boards and trustees, and faculty, by "dinging" or advising colleges that it should restrict communication with faculty members; and by advising board members that they should get their information from college administrators, and not from labor organizations. The effect of this is to increase the power of administration at the expense of California law and public policy, and to facilitate the other unfair and unlawful and anti-competitive practices alleged herein.

e. ACCJC has acted to (a) support legislation or governing board actions which increase administrator salaries, and has (b) criticized and implicitly threatened sanctions for colleges which tie administrator salary increases to faculty pay rates.

i. On May 1, 2012, Pamila Fisher was appointed as CCSF's Interim Chancellor, following the sudden resignation of its Chancellor, due to illness. Fisher served until October 2012. When she was appointed, Fisher was working for the Association of California Community College Trustees, and retired from serving as the Chancellor of the Yosemite Community College District. At the time she accepted employment with CCSF, Fisher was receiving a pension from the California State Teachers Retirement System (CalSTRS). CalSTRS rules, mostly memorialized by statute, restricting the earnings of retired annuitants such as Fisher.

ii. In May 2012, the Legislature was considering two bills, AB 2275 and AB 178, under which interim administrators could both collect a salary and their full retirement income, exempting them from some restrictions in State law. Beno, at the request of Fisher, contacted CCSF's Governmental Relations office, asking for information on who she should write to in support of legislation benefitting interim administrators being able to collect full retirement pay and salaries. Beno indicated she would write to the Legislature on behalf of the ACCJC and WASC, and that this legislation was critical to the survival of community colleges, particularly those needing special trustees.

iii. Over the following several weeks, Beno and CCSF's Governmental Relations Office communicated periodically about the status and terms of the proposed legislation, and what Beno could do to assist in its passage. On May 20, 2012, CCSF's Board President John Rizzo wrote to Assembly Member Gorrell urging support for AB 2275. Rizzo's letter was cc'd to Beno. On June 7, CCSF provided Beno with a draft letter which the College intended to send to the Senate Committee on Public Employment and Retirement, in support of AB 178. AB 178 would have extended the sunset date for a post-retirement earnings limit affecting Fisher, to June 30, 2014 from June 2012. The letter was eventually signed by CCSF Board President John Rizzo, and was sent to the appropriate Senate Committee.

iv. At Fisher's request, CCSF kept President Beno informed about the prospects of the legislation. On June 12, 2012 the Governmental Relations Office notified Beno that AB 178 would increase the amount of post-retirement earnings to$44,000, from its then limit of $32,000. CCSF indicated it would be lobbying to increase it further, to around $66,000, but that there was opposition in the Legislature and Governor's office. Beno responded to CCSF that same day, stating that an increase to a $44,000 limit was not much help.

v. On June 12, 2012, Beno advised CCSF that she was sending ACCJC's letters of support for AB 178 to the Assembly and Senate that day. She thanked CCSF for its assistance. Beno's signed letters were actually submitted to the Legislature on June 12, 2012, on behalf of the ACCJC. In her letter to Assembly Member Gorell, Beno wrote about how important it was for California community colleges to:

> "... hire high quality interim administrators and consultants from the ranks of retirees to fill in positions while they are being advertised, or to spend a longer period of time helping an institution correct problems or to develop capacity to maintain quality as new administrators are trained ... Retirees serve a critical role in maintaining or rebuilding the quality of California community colleges during this period of significant demographic change.
>
> It is ACCJC's view that the availability of experienced, highly qualified temporary administrators is critically important to institutions success in maintaining compliance with Accreditation Standards and in providing experienced leadership to help institutions found out of compliance to return to compliance and retain their accreditation. Unless the STRS exemption is extended, the California community colleges will experience significant hardship in finding the necessary leadership. The ACCJC supports your legislation AB 178."

vi. In 2008, Susan Cota, the Interim Superintendent/President of Mira Costa College, contacted Beno, inviting her to meet with the college's Board concerning their "role at MCC." (Mira Costa College, Academic Senate Progress Report 741, October 17, 2008.) Beno visited the college and met with three Senate leaders. As the Senate explained, "Some issues raised by Beno were enough to cause alarm." The Senate later called a special meeting to discuss these matters. (Mira Costa College Senate Progress Report 741, October 17, 2008, p. 1) The Senate's Report relates that:

> "**The meeting with Beno revealed that her concerns centered on the linking of faculty and administrator salaries to the same pay scale**, the size, scope, and organization of the Senate and district committee structure, and a perceived lack of clarity regarding planning processes. She stated that the college has in the past enjoyed a very good reputation across the state based upon its lack of a union among full-time faculty and staff and that its good reputation created a "halo effect" that may have caused prior visiting teams to overlook governance problems." (*Id.*)

f. ACCJC has encouraged colleges to hire administrators whose primary focus is on accreditation. Since the early 2000s, approximately 196 administrative positions that deal exclusively with accreditation matters have been created at ACCJC member institutions. These newly created positions often even bear the name of particular Standards (such as dean of Institutional Effectiveness, vice president of Student Learning Outcomes.). The supposed necessity for these additional administrators emanates from the demands that the ACCJC place on colleges in order to comply with their Standards. These positions detract from the funds available to hire more faculty and better serve students needs.

181. Federal law, including 20 USC section 1099b, also requires that an accrediting agency, to be reliable, must be independent, both administratively and financially, of related, associated or affiliated trade association.

182. Having accreditation evaluation teams dominated by management creates a conflict with the accreditation objective of an independent review. Evaluation teams are supposed to be "impartial," "peer evaluation teams," "reflective of the diversity of the college." (Team Evaluator Manual, 2.3 Team Selection, pg. 4). Commission documents declare that Evaluation Teams are **not** supposed to be "*representative of an organizational constituency.*" (Team Evaluator Manual, 2.3 Team Selection, pg. 4, emphasis added.) The managers who dominate ACCJC's teams belong to, are generally active in, and participate in the meetings and activities of various trade associations composed of CEOs, Chief Business Officers and other administrators of the California community colleges, including but not limited to the CCLC, a trade groups which advances administrative interests. ACCJC encourages colleges, to satisfy accreditation standards, to adopt CCLC policies which diminish the rights of faculty and intrude on subjects which are negotiable under California law (the EERA, Cal. Gov/t. Code § 3540 et seq.). Some of these policies are (1) contrary to the EERA's provisions for negotiation of subjects of bargaining and (2) contrary to the California Constitution. For example, ACCJC has encouraged the unilateral adoption of policies on ethics and civility, although these subjects are negotiable under the California EERA for inclusion in a collective bargaining agreement. The CCLC has drafted "model" policies governing the rights of free speech which create tiny "free speech zones" on large college campuses, and otherwise limit freedom of speech, thereby restricting the free speech rights of students, employees and the residents of California. Hence, ACCJC violates the mandate of 20 USC section 1099b(3)C).

183. ACCJC's action to use accreditation to require colleges to prefund OPEB liabilities under

GASB 45's calculation formula, by depositing funds which could be used for employee compensation into irrevocable trusts, which has been encouraged by administrators such as Steven Kinsella, who has served as an ACCJC team member, task force member, and Commissioner, and served as the CCLC founder, Board member or alternate member, of the CCLC Retiree Health Benefits JPA. The effect of this policy has been to decrease the funds available for employee compensation and depress faculty salaries. By making prefunding a condition of accreditation, ACCJC has placed an anti-competitive obstacle in the path of fair, bilateral collective bargaining negotiations over employee compensation.

184. Despite the continual citation to colleges that they hire more administrative support, the equivalent recommendation in terms of faculty is seldom, if ever, made. In fact, ACCJC reports have been known to suggest that institution's cut the amount they are expending on faculty or union contracts (in other words, salary cuts or layoffs). This bias toward administrative positions is also seen in other accreditation documents that the ACCJC distributes. In the "Annual Fiscal Questionnaire", the Commission asks each institution questions such as, "During the reporting period, did the institution settle any contracts with employee bargaining units?", and "Did any contract settlements exceed the institutional COLA for the year?", in regard to the salaries and benefits of the classified staff and faculty. See Attachment 8.C. What the questionnaire does not concern itself with, however, is the salary or pay raises of *Administrators*. This is especially revealing since, being the most well paid employees of each community college, administrative increases in salary, even in small percentages, tend to be dramatic. Similarly, the Commission views "turnover" and "interim positions" in Administrative Positions as a negative, and has frequently cited institutions as deficient for having these sorts of situations (2004 Evergreen Valley College Evaluation Report, progress noted on p.14 of October, 2010 Evaluation Report, 2012 CCSF Evaluation Report p. 16 Examples). In the case of Palomar College the Commission even went as far as to forbid a certain type of Administrative Evaluation. (2009 Palomar College Evaluation Report pp.67-68).

185. The accreditation paradigm pushed by the ACCJC, and enforced by the threat of deficiencies and the use of Standards interpreted and applied by administrators and former administrators, mandates that colleges need 1) more administrators, 2) highly compensated administrators, 3) despite sanctioning colleges or finding deficiencies due to high faculty pay, high

administrative pay is never a deficiency or grounds for sanction; 4) pay faculty and other employees less in compensation, and 5) reduce faculty participation in governance. Through the practices described herein, ACCJC acts to reduce competitive faculty and employee compensation.

Conflicts of Interest Resulting From the Appointment of Commissioners and ACCJC Staff to Evaluation Teams

186. ACCJC has a practice of periodically appointing members of the Commission itself or its staff to chair or serve on evaluation teams, compromising the independence of the teams. Such actions are unfair and unlawful business practices as they impair the independence of evaluation teams from the Commission and constitute a conflict of interest or the appearance of a conflict of interest.

187. As alleged above, ACCJC policy, Federal regulations, and fairness demand that evaluation teams remain independent of the Commission.

188. ACCJC has appointed commissioners and ACCJC staff to participate in evaluations of CCSF and other colleges. These appointments include, but are not limited to, the following:

a. The CCSF 2013 Show Cause team included John Nixon, ACCJC Commissioner from July 1, 2008 until June 30, 2011, and thereafter ACCJC Vice President. He has been team chair of several college evaluations (CCSF 2013, Solano in 2009 and 2010; Santa Barbara in 2009, Ohlone in 2008, Redwoods in 2010, and Western Career in 2008).

b. Approximately 10 evaluation teams have been chaired by ACCJC Commissioner Steven Kinsella, including Antelope Valley in 2010, Sierra College in 2007,2009 and 2012, Palomar 2007 and 2010, College of Micronesia in 2012, Bakersfield College in 2012 and Redwoods, twice in 2007 and once in 2008.

189. In summary, ACCJC's biases in favor of administrators, and against faculty and trustees, arises out of and amount to unfair and unlawful business practices.

ACCJC's Unlawful and Unfair Business Practices In Its Efforts to Require Plans to Prefund Estimated Future Costs of Retiree Health Benefits and to Evaluate Colleges Based on This Improper Element of Fiscal Stability

Introduction

190. In 2005 the Community College League of California became the first California entity to create a "trust fund" to accept pre-funded, irrevocable payments of money for estimated future retiree

health benefits liability, from California community colleges. This "trust" was created by Steven Kinsella, the Superintendent/President of Gavilan Community College, and others associated with the CCLC, as a Joint Powers Agency under California law, and under the auspices of the CCLC. The notion of pre-funding these "other post-employment benefits" or "OPEB" came from a publication called "GASB 45," discussed further below.

191. ACCJC referred to the "need" for colleges to prefund this estimated future liability in literature published and distributed by the CCLC in 2005, to the State's community college districts. This literature emphasized statements by the ACCJC and its president Barbara Beno, about a need for colleges to prefund the their estimated future retiree health benefit liabilities to satisfy Commission Standards. It also indicated, as discussed more below, that this new "GASB 45" accounting standards "will require" districts to pay money annually towards it's multi-million dollar liability, or accrue the amount owed as a liability on its annual financial statements. (CCLC "Special Report" issued Fall 2005; a copy of this Report is attached hereto as **Exhibit 2**)

192. The CCLC JPA trust eventually was joined by about 23 college districts, which collectively deposited upward of $140 million into it. As alleged below, the trust received entrance fees from colleges or district which joined. It also received annual fees based on the amount of money deposited each year. The more colleges joining the JPA, the more money the JPA made. Scott Lay, the CCLC's long-time president, promoted the CCLC JPA, at, for example, a meeting of a community college board. Upon information and belief, the JPA paid money to the CCLC, for services provided by the CCLC. The trust had about 23 trustees, all of whom were employed by the member colleges of the trust.

193. ACCJC appointed team leaders and members to visiting teams, who evaluated colleges on their success in prefunding their estimated future retiree health benefit liabilities. Some of these team leaders and members were trustees of the trust, or alternate trustees, or worked as administrators for districts which belonged to the trust, or to similar trusts which had sprung up after the CCLC JPA trust. Steven Kinsella served on about 13 evaluation teams, at least 10 times as a team leader. At an unknown date, but by 2010, ACCJC also appointed Kinsella to its Financial Task Force, which at an unknown date began working on a revised Standard for fiscal resources and capacity. In or about 2009, ACCJC

appointed Kinsella to fill a suddenly vacant seat on the Commission. He then was reappointed to a three-year term, and was made Vice Chair of the Commission. Evaluations from visiting teams which included team leaders and members who were also trustees, sometimes urged colleges to prefund their retiree benefits by making deposits of money into irrevocable trusts, and sometimes these "recommendations" or "directives" referred specifically to the CCLC JPA trust.

194. A significant factor in ACCJC placing CCSF on show cause status, and then disaccrediting it, was CCSF's failure after 2006 to make progress towards "addressing" by "prefunding" its estimated future liabilities for retiree health benefits, which are often referred to as Other Post-Employment Benefits ("OPEB").

195. As alleged with greater particularity below, OPEB prefunding was the subject of "recommendations" made to CCSF in 2006, 2007, and 2010. When CCSF did not prefund this estimated liability, by depositing funds into the irrevocable trust fund, this "failure" was a reason why ACCJC placed CCSF on Show Cause sanction in June 2012, and then disaccredited CCSF in June 2013. This element - prefunding of estimated future retiree benefit liabilities - had been given "special emphasis" by ACCJC in president Beno's 2007 letter to CCSF.

196. CCSF joined the CCLC JPA trust in or about 2008. However, it never deposited District funds into the trust.

197. During the last approximately ten years, the ACCJC has coerced colleges into "prefunding" their estimated future retiree health benefit (OPEB) liabilities, by using their success or failure at prefunding them as an element for accreditation. ACCJC has used this criteria to evaluate a college's fiscal resources and fiscal stability. However, assessment of OPEB prefunding was not a written or published Standard until one or two days *after* ACCJC placed CCSF on Show Cause sanction in 2012. That is when ACCJC amended its Standard III to include OPEB pre-funding as an element of fiscal stability, as a result of the Task Force chaired by CCLC JPA trustee Steven Kinsella.

198. ACCJC's sanctioning of CCSF for not prefunding into the CCLC JPA trust was the result of serious conflicts of interest, or the appearance of conflicts of interest, involving the ACCJC and the founders and trustees of the CCLC JPA trust, as alleged with greater particularity below.

199. In their capacity as JPA trustees (board members), the trustees owed a fiduciary duty to

the trust to maximize its assets. As ACCJC commissioners and evaluators, they owed a fiduciary duty to fairly and impartially evaluate colleges. This dual relationship created a conflict of interest, or the appearance of a conflict, which began in or about 2005, and has continued to the present. As alleged with greater particularity below, this and other aspects of the "prefunding" criteria of accreditation constitutes unfair and unlawful business practices which prejudiced an impartial review of CCSF in 2012 and after.

ACCJC's Use of OPEB Prefunding as an Accreditation Requirement Arises Out of Its Conflicts of Interest With A Trust That Accept OPEB Prefunding. ACCJC has Coerced Colleges to Prefund Estimated OPEB Liabilities Through Sanctions or Threats of Sanctions Involving JPA Trustees Who Also Represented the ACCJC

200. Starting in the 1960s, the State of California, acting partly because teachers and other faculty in the public schools and community colleges did not qualify for Medicare, adopted a public policy encouraging public employers to provide health benefits for their employees and retirees. (Cal. Government Code § 53205.2) Nearly every California community college district provides this benefit. According to the Community College League of California, 66 of 72 districts provide this benefit. (CCLC Special Newsletter, Spring 2006, p. 2) CCSF provides this benefit.

201. These future retirement benefits may constitute contractually-vested rights, protected from diminution by the Contracts clause of the California and U.S. Constitutions. (See, e.g., *Retired Employees Association of Orange County v. County of Orange* (2011) 52 Cal. 3th 1171, 1192 - 1194).

202. In June 2004, the Government Accounting Standards Board, a private organization that sets generally accepted accounting principles for public sector entities, issued its "GASB No. 45" statement, entitled *Accrediting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions*:

> "GASB 45 promulgates *financial reporting standards* for OPEB plan sponsors, namely state and local government employers offering OPEB. The GASB No. 45 statement requires public employers to *produce actuarial valuations* for their OPEB, following government accounting principles, and to report these liabilities on their financial reports." ("Prefunding Other Post Employment Benefits (OPEB) in State and Local Governments: Options and Early Evidence," Center for State & Local Government Excellence, Coggburn and McCall, September 2009)

GASB 45 thus establishes *guidelines* for how public employers should *report* the costs of employer-provided retiree health plans. GASB 45 *does not* require that future liabilities be pre-funded, only that they be reported. (*Id*., p. 8)

203. One of the tools used by GASB 45 to calculate this future liability is the "Annual Required Contribution" ("ARC") The ARC is not actually required to be paid by any entity. Rather it is used in GASB 45 as a *measurement tool* to inform public entities what their Annual Required Contribution would be ***if*** they to pay annually a projected yearly contribution needed to amortize the estimated future liability of the OPEB within the time span of 30 years; and, deposit each year into an "irrevocable trust" fund the annually amortized amount based on payment over 30 years. The standard noticeably, *does not* require that an ARC be made, that an irrevocable trust be formed, or that future liability be planned for. Except for the cost of the accounting, no new costs for benefit coverage are created by GASB 45. The expressed intention of the standard is instead to "make the liabilities due to the promise of health care insurance to retirees more transparent and to recognize the liabilities during the years of service to employees." (Clark, Robert L.. "Will Public Sector Retiree Health Benefits Plans Survive? Economic and Policy Implications of Unfunded Liabilities." American Economic Review: Papers & Proceedings 99.2 (2009): 533-537.) In essence, GASB 45 sought to raise awareness and implement a check on public entities to keep them from promising more than they planned to their employees, by requiring them to *look* at the reality of what is being promised.

204. In an official response released by GASB to the question, "What are the most common misconceptions about Statement 45?" the Board answered,

> "**That it requires governments to fund OPEB.** Statement 45 establishes standards for *accounting and financial reporting.* How a government actually finances benefits is a policy decision made by government officials. The object of Statement 45 is to more accurately reflect the financial effects of OPEB transactions, including the amounts paid or contributed by the government, whatever those amounts may be." (GASB Statement 45 on OPEB Accounting by Governments: A Few Basic Questions and Answers, attachment 7A to CFT's April 30, 2013 Complaint to USDE and ACCJC, emphasis in original)

205. The "predominant" approach to "OPEB funding" by governmental entities is "pay-as-you-go" funding. This means an entity pays the annual cost of retiree health benefits, and does not pay an additional amount into a trust, to be paid years later. GASB requires that governmental entities calculate and report the amount that they would have to pay annually *in order to fully fund the amount of their liability that is estimated will come due during the next 30 years* (the "ARC"). While some agencies have elected to fund the ARC, many have not. Prefunding the "ARC" presents difficult financial challenges as "the ARC will likely be substantially higher than annual pay-as-you-go-

payments." (*Id.*)

206. As alleged below, during the 2011-2012 fiscal year, CCSF paid the actual cost of retiree health benefits, a sum of $7,243,730. But had it elected to pay the entire estimated ARC, it would have had to "pay" a total of $16,590,309, meaning that CCSF would have had to pay another $ 9,236,579. That would have been nearly 4.7 percent of its budget. To pay that amount, CCSF would invariably have had to make huge cuts in personnel and classes. Sensibly, CCSF did not try to prefund its estimated, future retiree health benefits during 2011-2012. Following ACCJC's directive would have been suicidal for CCSF given the recession and the State-wide fiscal crisis affecting the State's funding of the community college system. The decision on whether or not to prefund was left to the college itself, particularly in view of an official advisory from the State Chancellor's Office in 2010 (discussed below). It was not a proper evaluative criteria for the ACCJC, as it did not measure the quality of education provided by CCSF in 2012, 2013, or over subsequent years.

207. The Center for Local and State Government Excellence has observed that it is frequently misunderstood that GASB 45 requires prefunding:

> "One of the myths (Clark 2008) that has surfaced post-GASB 45 is that the statement requires OPEB providers to establish irrevocable trusts and to prefund retiree health care ... such actions are not required by GASB 45 ..." *Id.*

208. The California Debt and Investment Advisory Commission also issued a OPEBs & GASB 45 Question and Answer Guide in 2005 which emphasized that "GASB 45 does not require liabilities to be funded through an irrevocable contribution ..." *Id.* p. 2.

209. Despite the above, starting in 2004, ACCJC began to examine prefunding of OPEB monies. From brief initial comment, this criteria became more important and over the next several years ACCJC indicated it was reviewing colleges on their district's paying the ARC into an irrevocable trust, as an element of fiscal stability and resources. Further, it began to use this a criteria, in which the "failure" to prefund into an irrevocable trust amounted to a lack of fiscal stability, and could result in sanctions. ACCJC pushed this notion hard, even though no written or published ACCJC Standard or Eligibility Requirement, or element of any Standard, referred to OPEB prefunding. Several of ACCJC's efforts to coerce colleges into prefunding their estimated future liabilities under GASB 45 referred to the irrevocable trust which had been had been created by the Community College League of California.

CCLC JPA trustees, such as the trust's founder Steven Kinsella, were directly involved in representing ACCJC as either evaluation team leaders or members, or as commissioners.

ACCJC Is Entangled With an OPEB Trust Which Receives Prefunding Contributions Coerced by the ACCJC

210. The ACCJC and the Community College League of California became entangled over the prefunding of estimated retiree health benefit liabilities, such that the ACCJC used the implied or direct threat of accreditation problems to coerce college districts into depositing District funds into the CCLC retiree health benefits JPA irrevocable trust run by the League, or similar trusts. Numerous community college administrators active with the ACCJC as team leaders or evaluators, and commissioners, stood in a position to make recommendations to sanction colleges, or vote as commissioners to find deficiencies and sanction colleges for failing to deposit college district funds into a trust including, in some cases, the JPA retiree health benefits trust that they oversaw as trustees. When the ACCJC took actions to encourage prefunding of the ARC to avoid accreditation problems, or which criticized or threatened sanctions if college districts failed to deposit funds into the JPA-operated trust fund, ACCJC was engaged in a conflict of interest or the appearance of a conflict, resulting from these facts.

211. The Community College League of California ("CCLC") is a "trade association" composed of California's 72 local, public community college districts, and hence the 112 colleges. The League includes two "major organizations" which share a common mission, staff and fiscal resources, the California Community College Trustees, and the Chief Executive Officers of the California Community Colleges. Two other organizations are affiliated with the League, the Association of California Community College Administrators, and the California Community Colleges Classified Senate.

212. Starting on or about January 2, 2005, the League created an irrevocable OPEB "trust", in the form of a Joint Powers Authority authorized by California law, to accept, maintain and administer prefunded contributions for retiree health benefit liabilities paid by ACCJC-accredited colleges, according to a formula calculated by an outside entity (GASB), using the GASB 45 calculation.

213. In 2005, the CCLC announced that "business officials" of several community college districts, under the leadership of the CCLC, had created the JPA. A total of 19 community college

districts (which in the aggregate included more than 25 colleges) initially joined this new "statewide JPA" to prefund retiree health benefits." (CCLC Newsletter, Spring 2006, p. 1) More districts joined later.

a. The formal name of the JPA trust is the Community College League of California Retiree Health Benefits Program Joint Powers Authority. *Id*., p. 1. The parties to the Agreement forming the JPA are the CCLC and the trust's member college districts. Each party (i.e. each district) appoints, through its governing board, an individual member who serves as a member of the JPA Board. (JPA 2009 Bylaws, pp. 1-3) The CCLC announced that the "charter" districts of the JPA were: Antelope Valley, Coast, Copper Mountain, Desert, Foothill-DeAnza, Gavilan, Glendale, Grossmont-Cuyamaca, Kern, Lake Tahoe, Merced, Palomar, San Diego, San Joaquin Delta, Sequoias, Shasta, Siskiyou, Solano, Southwestern, West Hills, and Yuba. (CCLC Special Report, "Funding Retiree Health Benefits - A new financial challenge ...", Spring 2006, p. 1)

b. College districts which join the JPA pay initial start-up fees of about $5,000, annual fees of about $3,000 after that, and an annual charge for money invested with the trust, set at .05 basis points per $ 1,000,000 invested. per year. (See Bylaws, p. 9) Thus, the JPA trust benefitted financially from each college district which joined the trust, having been encouraged to join by the goal of avoiding accreditation troubles, this goal having been announced by statements appearing in the CCLC newsletters described above, statements by ACCJC personnel, in literature, evaluation reports, action letters or, upon and belief, ACCJC presentations about accreditation to community colleges and their agents or personnel.

c. As of June 30, 2012, the trust contained approximately $130 - $140 million, and was generating revenue to the CCLC and/or its CCLC JPA of approximately $140,000 per year.

d. Besides the CCLC JPA trust, other institutions launched trusts to accept prefunded contributions from California community colleges soon after the CCLC JPA was created, including the Public Agency Retirement System ("PARS"), Keenan and Associates, and Self-Insured Schools of California ("SISC"). Upon information and belief we allege that some California community colleges have pre-funded estimated OPEB liabilities with these and possibly other entities, in an amount presently unknown, and that they did so, in part, due to the ACCJC's consideration of a college's prefunding in order to determine whether to accredit or sanction a college.

214. The first chair of the JPA's Board, and one of its founders, was CCLC member Steven Kinsella, who was and remains the president/superintendent of Gavilan Community College. He is also a CPA and an instructor in finance at Golden Gate University. According to JPA records, Mr. Kinsella has remained as Gavilan College's representative to the JPA trust's "board of directors," since the JPA was founded, through at least 2013.

215. Beginning on an unknown date in the 2000s, the ACCJC became a "conference partner" of the CCLC, and regularly presented seminars and participated in CCLC's annual conference and other CCLC events. ACCJC has been a regular presenter of seminars on accreditation at CCLC conferences. According to CCLC literature, some of its conference partners receive compensation from appearing at CCLC conferences.

216. Beginning in or about 2005, Steven Kinsella became active in serving on ACCJC evaluation teams. In or about 2007, he began serving as the chair of ACCJC evaluation teams. He has served as chair of approximately 10 teams, which appears to make him the most frequent team chair during the last 10 years.

217. A chair of an ACCJC site visit team has extraordinary power. The Team Chair "organizes the evaluation visit, ... speaks for the team, and is the author of the final External Evaluation Report ... During the evaluation visit, the Team Chair organizes the team discussions, ... and assures that the limited time of the team is used effectively. At the conclusion of the visit, the Team Chair conducts a final open meeting with members of the college staff." (ACCJC Team Evaluator Manual, 2013 ed., p. 11) The Manual explains further, that as "manager" of the visit, the Chair "guides the team during the visit, ensuring that the Institutional outcomes are assessed in light of the institutional mission and the Accreditation Standards ..." (*Id.*) In addition, the Chair " is responsible for writing a clear, concise, well-organized and coherent document that will stand up under the careful scrutiny of a wide variety of readers. The report should honestly reflect the views of the team ... the Team Chair is expected to produce a coherent, unified account of the team findings. In doing so, the Team Chair has considerable editorial latitude in constructing the team report." (*Id.*, pp. 11-12) As a Team Chair, Kinsella is responsible for a number of evaluation report which effectively coerce districts into prefunding retiree

health benefits, and writing reports on colleges which had joined the trust he founded and served as trustee at the same time he was a team chair of a trust member's site visit committee. Kinsella served as chair of Solano in Fall 2008, Palomar in March 2009, and Antelope Valley in 2010, and the Reports he was responsible for writing effectively informed colleges they needed to pay funds into the Trust he founded and on whose Board he served on.

218. Kinsella was appointed by the Commission to serve as a commissioner to complete the term of a deceased commissioner, in or about January 2010, or earlier. He was subsequently appointed for a full term from July 1, 2010 to June 30, 2013, and was at an unknown date, appointed as the Vice Chair of the Commission. Kinsella was appointed by ACCJC to serve as one of the ACCJC's three appointees to the board of the Western Association of Schools and Colleges (WASC). He also was appointed and has served as the Chair of the ACCJC Fiscal Task Force, in or about 2011, or earlier, which worked on revisions to the ACCJC's standards on financial resources. This led to the adoption of a new Financial Resources Standard III.D. in June 2012. The new Standard included, for the first time, two written requirements regarding the ACCJC reviewing colleges actions in allocating resources for Other Post Employment Benefits. (Standard III.D.3.c.)

219. The CCLC issued a Special Report in a Fall 2005 Newsletter, proclaiming the value and need of colleges to prefund OPEB. This Report featured comments from the ACCJC and its president Barbara Beno, who promoted the need, from an accreditation standpoint, for college districts to deposit district assets into the a trust. The placement of information touting the need, in a CCLC newsletter, supports the conclusion that she was encouraging California community colleges to prefund their OPEB liabilities through the CCLC trust. The four-page long Special Report is devoted exclusively to OPEB, GASB 45, and the new JPA trust. (See Exhibit 2) The Report states that GASB 45 requires colleges to annually pay towards their unfunded liability, or "accrue" the ARC "as a liability on its annual financial statement." The Newsletter, which was distributed to the presidents, chancellors and trustees of California's community colleges, warns of the need to prefund or possibly face Accreditor sanction. The following statements appear in the Newsletter, attributed to president Beno:

> "The possible consequences of delaying either funding the liability or taking steps to manage the liability include: Audit ... Credit ... Accreditation. The Accrediting Commission, in a statement on page two of this report, states that districts are required 'to identify the amount of and make plans to pay unfunded liabilities." (CCLC JPA

Newsletter, Fall 2005, p. 4)

This same newsletter contains two prominently displayed comments from the ACCJC, one signed by president Beno. Beno's statements warn that GASB 45 liabilities are a factor in accreditation evaluations. The first, displayed in a large red box on page two, states:

> "The requirements of GASB 45 concerning the reporting of retiree health benefit liabilities are in alignment with current Commission standards and practices. The Commission's standards IV.D.1 and 2 require that an institution's financial resources be sufficient to support its mission, and that institutional financial plans identify and make provision for financial liabilities. These requirements include the following ... the institution clearly identifies and **plans for payment of liabilities and future obligations**.
>
> For the past several years, **the Commission has cited unfunded liabilities associated with retirement and other benefits as a factor in evaluation of institutional financial stability** and management quality and **required the institution to identify the amount of and make plans to pay the unfunded liabilities. Governing board efforts to address GASB 45 will likely bring institutions into alignment with existing accreditation standards** ..." *Id*., p. 2
>
> Another statement, prominently displayed on page 1 of the Newsletter, also states that,
>
> "The requirements of GASB 45 concerning the reporting of retiree health benefit liabilities are in alignment with current Commission standards and practices. Current standards state specifically that governing boards are responsible for the fiscal health of the colleges they govern. Accrediting Commission. *Id*., p. 1

220. The new JPA was also prominently mentioned in the **Spring 2006 edition of *League in Action* newsletter**, which announced on the front page that, "19 districts join new statewide JPA to fund retiree health benefits." It stated,

> "California community colleges are invited to join 19 charter member districts ... in a new statewide program to help community colleges address the challenge of retiree health benefits. The new joint powers agency (JPA) is a state-approved legal and financial structure that will allow community college districts to invest in a special trust designed to fund long term health benefits for current and retiree employees." *Id.*

The Newsletter emphasized the advantages of joining the JPA:

> "**According to [Steve] Kinsella**, the League-sponsored JPA is the only higher education entity of its kind in the United States **established expressly for the purpose of facilitating compliance with the new accounting standards**. **The non-profit organization is led by Kinsella**, and ... They were selected by fellow community college leaders on the JPA board.
>
> The JPA provides its members an approved list of actuaries they can work with to determine their financial liability for future retire health benefits ...
>
> The League has led an effort over the past year to inform trustees, chief executive officers and chief business officers about the new accounting standards, known as GASB 45 . **The Accrediting Commission has urged districts to comply with GASB 45 standards as well, stating, 'The Commission's standards require that an institution's financial**

> **resources be sufficient to support its mission, and that institutional financial plans identify and make provision for liabilities**.'" (*Id*., p. 7, emphasis added)

These comments had the natural and probable effect of persuading colleges to prefund their retiree health benefit obligations. The same League newsletter identified ACCJC as one of the League's "Partners in Professional Development." *Id*. p. 2. As the Newsletter explained, 11 statewide associations, including the ACCJC, had "joined with the League in offering outstanding professional development" at the League's annual "Convention and Partner conference" each November. *Id*. p. 2.

221. The League's **Fall 2006 Newsletter** continued to promote the JPA. It stated that the 22 districts which then belonged to the JPA "have created an irrevocable trust ..." and that Steven Kinsella was the chair of the JPA board of directors. (Newsletter, p. 4.) Kinsella was quoted at length,

> "The Retiree Health Benefit Program JPA Board of Directors is pleased that so many community college district trustees, chief executive officers, and chief business officers have embraced, through their membership in the JPA, our collective effort to address the GASB 45 challenge many of us face. The JPA Board of Directors and its Investment Committee will carefully and prudently monitor the program and its investment options to insure maximum return on your capital with minimum market risk. I invite all districts that are not now currently members to give consideration to joining this important statewide JPA." Id., p. 4

And then the Newsletter again encouraged colleges to join the trust to avoid accreditation problems:

> "Participation in the program allows California community college districts to fully comply with GASB 45 **and to comply with the Accrediting Commission standards related to having financial plans that meet all long-range financial priorities, liabilities and obligations**." *Id*., p. 4, emphasis added.

The article included a "block" promotion for the League's "37- page booklet explaining GASB 45 and the investment options." *Id.*

222. Mr. Kinsella has had an active role as Team Chair on various ACCJC Site-visit Evaluations, serving as a team chair before and after he became a commissioner, and more often than nearly any other individual. Within 2 years of helping to set up the JPA trust, and while serving as a member of the trust's board, ACCJC appointed him to serve as chair of several teams which evaluated colleges prefunding of their estimated future retiree health benefits costs. These include, but are not limited to:

a. **Sierra College - October 2007**. A reference to prefunding of OPEB liabilities through an *irrevocable trust* appeared in the October 2007 Sierra College Evaluation Report prepared by a team of 8 administrators and one faculty member, chaired by Steven Kinsella. According to the JPA, Mr. Kinsella was a board member (or trustee) of the trust when he undertook to serve as the team leader of Sierra college in 2007. The October 2007 Evaluation Team Report, which lists Mr. Kinsella as team chair, stated,

> "**If the college does not pay $5.5 million per year into an irrevocable trust fund, it will accumulate an unfunded liability** that will be reported on the college's financial statements. At the time of the team's visit the college had not established a long term financial plan to address this obligation (III.D.1.(c)."

> "Recommendation # 5:
> Plan for Long-Term Debt Financing--The team recommends that the college **develop a long term debt financing plan to address the costs associated with implementation of GASB 45 requirements**. (Standard III.D.1.C)" (October 2007 Evaluation Report, Sierra College, p. 55, emphasis added)

Thus, when Mr. **Kinsella** was serving as Chair of the Sierra team, Gavilan College was still a member of the CCLC JPA, and Mr. Kinsella was still a trustee of the CCLC JPA. Sierra College was placed on Warning by ACCJC in January 2008.

b. **Palomar College - March 2009.** In a March 2009 Evaluation Report, the team chaired by Steven Kinsella and composed of 7 administrators and 2 faculty, issued an Evaluation Report. The College had joined the Community College Leagues' Retiree Health Benefit JPA, but *the College had not deposited monies in the CCLC JPA trust*. The Kinsella-led team found fault with this, criticizing the College's failure to pre-fund the OPEB, and criticizing the College for not adding funds to the League-run JPA. In other words, the ACCJC, in a report by Kinsella and his team, criticized Palomar College for not paying into the JPA trust of which Kinsella was a founding chair, and still was involved through Gavilan's participation, and through service as a trustee or alternate trustee for Gavilan College (See Gavilan Joint Community College District Retirement Board Minutes, September, 8, 2009)**.** The Palomar Report stated:

> "Recommendation #11: Long-Term Health Fund Liability–In order to meet the Standards, the team recommends the college **identify and plan for the funding of the future retiree health benefits** (III.D.1.b, III.D.1.(c) ... (Evaluation Report, 3/09, pg. 11, emphasis added)

> The College is **not paying an amount into the fund that equals the Annual Required Contribution (ARC)** and as a consequence will be recording a liability for the portion of the obligation that is not funded on an annual basis. By drawing down the fund balance of the Retiree Benefit Fund the College is not paying the minimum annual cost of actual

> expenditures incurred during the year or what is referred to as the "pay-as-you-go" amount which is not a funding method but is at least an approach that pays for the yearly costs of these benefits ...
>
> **If the College does not pay $4.5 million per year into a trust fund, it will accumulate an unfunded liability** that will be reported on the College's financial statements. The 2008-09 Adopted Budget includes the in and out transfers but does not contain funding for this liability. **The District is a member of the Community College League's Retiree Health Benefit Program JPA that assists districts in responding to GASB No. 45. However, the District has not transferred any funds to the JPA** and, through its payments in FY 07/08, is starting to consume its ending fund balance. (Palomar March 2009 Team Evaluation Report, p. 82, emphasis added)

Palomar was given the sanction of Warning, in part based on its failure to prefund the OPEB. The Commission's June 30, 2009 action letter stated.**:**

> "The Follow-Up Report of March 15, 2010 should demonstrate the resolution of the recommendations noted below: ...2. Modify the budget development process in a manner that will place the college's strategic plan priorities at the center of its resource allocation decisions (III.D. 1.c) 3. Develop mechanisms to regularly evaluate all of the college's planning and resource allocation processes as the basis for improvement"

The Commission issued a June 30, 2010 letter which continued the College on warning, stating,

> "Recommendation # 11 (2009) Long-Term Health Fund Liability- In order to meet the Standards, the team recommends the college identify and plan for the funding of future retiree health benefits (III.D. 1.b., III.D.1.c)"

c. **Antelope Valley College - October 2010**. During the evaluation of Antelope Valley in October 2010, Mr. Kinsella served as chair of the evaluation team, and at the same time, was the Vice Chair of the Commission itself. And, he remained a trustee of the CCLC JPA trust, according to documents produced by the JPA.

In an October 18-21, 2010 Evaluation Report to Antelope Valley Community College District, a team led by Steven Kinsella, composed of 8 administrators and 3 faculty, issued a report criticizing the college's failure to pre-fund its retiree health benefit liabilities ARC by depositing them into "an irrevocable trust." (Report, p. 5) Kinsella's college was still a member of the trust, Kinsella was still the president of the College, and was listed by the JPA as a trustee in 2010.

i. The Kinsella-led team found Antelope Valley College at fault for utilizing the pay-as-you-go approach, and for not pre-funding the ARC as calculated under the GASB 45 formula:

> "**The college is using the Pay-as-You-Go approach** to pay for retired employee health benefits. **The cost of retired employee health benefits is about $500,000 per year ... with the Annual Required Contribution (ARC) calculated at $1.5 million per year** ...

> Now that GASB 45 has been implemented as generally accepted accounting principles ... colleges are going to see how the unfunded portion of the Annual Required Contribution appear as an expense in the current year. **As the unfunded liability increases, the college's unrestricted general fund balance will decline**. **In the case with Antelope Valley College, it is paying approximately $500,000 of the ARC account leaving an unfunded liability of $800,000. The unfunded liability will be reported on the Balance Sheet as an increase in the liability with a corresponding decrease occurring in the Unrestricted General Fund balance**. **The college has not yet established a plan to address this obligation and therefore does not meet the requirements of the Standards (III.D.1.c.)**" (Antelope Valley October 2010 Team Evaluation Report, p. 54)

As a recommendation the Team wrote,

> "Recommendation #4: **To comply** with the standards, it is recommended that the college, when making its short-range financial plan, e.g. the annual budget of the college, **consider its long-range financial obligation to pay the cost of the GASB 45 - Other Post-Employment Benefits (OPEB) as the costs are incurred instead of delaying payment to some future date**. Specifically the college is encouraged to prepare a comprehensive plan to prevent disruption of services offered to students by **paying the Annual Required Contribution (ARC) determined using generally accepted accounting principles into an irrevocable trust fund** at the amount equal to the actuarially determined Annual Required Contribution (III.D.1.(c)." (Report, p. 5)

Thus, Mr. Kinsella had three conflicting roles: he was a trustee of a trust eager to receive contributions from California colleges, he served as team chair and the team indicated that the college needed to consider its long-range financial obligation to "pay the cost" of the GASB ARC now, not later; and, he was Vice Chair of the Accrediting Commission, which was scheduled to vote on whether to accredit or sanction Antelope Valley College.

ii. On January 31, 2011, Beno wrote Antelope Valley advising that it had been reaccredited. Her letter included a "recommendation" that the college was "encouraged" to prepare a comprehensive plan "by paying the ARC (Annual Required Contribution" determined using ... accounting principles into an irrevocable trust fund at an amount equal to the actuarially determined Annual Required Contribution." (Letter, Beno to Jackie Fisher, Sr., January 31, 2011. A report sent to the ACCJC by Antelope Valley in 2012, the College said it would meet the obligation, by paying the monies into the ARC.

223. Other colleges were coerced by ACCJC into prefunding the ARC:

a. **Solano Community College - Fall 2008**. A 5-person ACCJC evaluation team, made up of five managers (two superintendents, a president, a vice chancellor and a business manager) and no faculty, reviewed several Standards, including 'Fiscal integrity and Stability." *It focused in particular on the 2005 recommendation of a retiree benefits reserve*. The team stated:

> "The College has not made progress meeting this recommendation ... **With regard to California State Regulation, GASB 45 ..., which requires a level of funding for a college's retiree and other benefits**, the college has done the following. The College contracted with an actuarial firm ... concluded that the College's Actuarial Accrued Liability is valued at $16, 087, 726 and the Annual Required Contribution (ARC) is $1, 728, 414. **To satisfy the requirements of GASB 45, the college has joined the Community College League of California's Retiree Health benefit Joint Powers Authority (JPA). To date the College has deposited $917, 000** ... but .... no further transfers have been designated in the ... 2008-2009 budget.
>
> "**Because of the significant liabilities ... the college should plan, budget and provide for the transfer of funds into the irrevocable trust to pay for future benefits in accordance with GASB 45**. Additionally, the college should maintain exploring all options available to reduce its continuing health benefit costs ... The college is at impasse with these two bargaining units. The inability to negotiate a cost cap will raise the district's long term costs for health benefits." (Solano Team Evaluation Report, Nov. 2008, emphasis added)

Concluding the College had not met this recommendation, the Team suggested that the college immediately develop a plan to establish a retiree benefits reserve and do "something" to address collective bargaining settlements to reduce these benefits. (Report p. 16-17)

i. On February 3, 2009, in an Action Letter, president Beno informed Solano College it had been placed on Show Cause sanction. Among the reasons given was the College's failure to establish a *reserve for retiree benefits*. (Letter, Beno to Solano, Feb. 3, 2009, p. 2) As to Standard III.D. and ER 17, Beno wrote, "In order to assure the institutions (sic) future fiscal stability, the College should immediately develop a detailed plan with a timeline and fixed responsibility *to address the establishment of a reserve for retiree benefits*." (*Id*., emphasis added) The College was, at that time, a member of the CCLC JPA trust.

ii. **Solano College Spring and Fall 2009**. In a "Show Cause" Report dated March 31, 2009, Solano asserted it had satisfied the Commission by contracting with one of the Community College League of California's "approved" actuaries, Total Compensation Systems," and **transferred funds into the Community College League's "irrevocable trust" to "pay for future benefits in accordance with GASB 45."** Show Cause Report, p. 28. The College declared its resolve to thereafter make the ARC payment into the CCLC "trust." *Id*.

iii. On April 27. 2009 ACCJC sent another evaluation team to the college - this time, four administrators led by ACCJC Commissioner John Nixon, who served as an ACCJC Commissioner from July 1, 2008 until July 2011, when he left his position as commissioner and became

Associate Vice President of the Commission. This team issued a "Show Cause" Report which found as to OPEB funding, that Solano college was now building a reserve. (Report, p. 15)

iv. On June 30, 2009, ACCJC changed Solano's Status to Probation. Again, multiple recommendations were made and one of them was that the college continue to build a reserve for retiree benefits. (Letter, Beno to Solano, June 30, 2009, p. 2) This letter was followed by two more Solano reports, and then more Commission reviews.

v. On October 29, 2009, a two person team of *administrators*, again led by Commissioner John Nixon, evaluated Solano. Presumably satisfied by Solano's joining the CCLC JPA and prefunding OPEB liabilities, there was no mention whatsoever of GASB 45. Another team visit followed.

vi. In October 2011, a 12 person team, *dominated by 9 administrators*, again reviewed Solano. Although the College was operating with a "planned deficit," the team decided that the College was now doing just fine with regard to OPEB, by putting money into the Community College League's irrevocable trust. As a member of the CCLC JPA "trust," Solano would have been required to pay the JPA an initial fee of more than $5,000, an annual fee ($3,000), and also five basis points for its contribution to the trust - estimated at approximately $22, 500 during the 2010-2011 Fiscal Year. Thus, ACCJC determined that the college's having a deficit was nonetheless not a problem because it was prefunding GASB 45 "liabilities" through the CCLC JPA. As the team recognized:

> "The College has established an irrevocable trust with the **Community College League of California** to fund health care obligations for retirees. The current operating budget includes **full payment of the Annual Required Contribution (ARC) as established by GASB 45. The ARC in the current year is paid by pay-go benefits for retirees as well as an expected current contribution to the irrevocable trust**." (2011 Solano Team Evaluation Report, p. 45)

b. **Los Angeles Trade Tech - March 2010**. In March 2010, a visiting team issued an Evaluation Report on Los Angeles Trade Tech which examined the District's creation in 2008 of an irrevocable trust to prefund retiree benefit costs, but needed to "reconcile the remaining net OPEB obligations." (Los Angeles Trade-Technical College, Evaluation Report, March 23-26, 2010, p. 42) The College was then placed on probation by a letter of June 30 2009 from President Beno, which cautioned that the District's OPEB liability needed to be carefully monitored for th "next few years."

(Letter, Beno to Rodriguez, June 30, 2009, p. 2)

On March 15, 2010 LA Trade-Tech filed a Probation Follow-Up Report which described its handling of the unfunded liability by negotiating with the District's unions to begin pre-funding part of the unfunded liability, and that it had reconfigured its benefits to significantly reduce the projected unfunded liability by nearly $100 million. (Follow-Up Report, p. 83) On June 30, 2010 ACCJC's action letter reduced LA's sanction level to Warning. The Warning letter included a "Commission concern" about how the College was addressing its OPEB liability and demanded more:

> "**The consequence of not funding an amount that is at least equal to the ARC** is that an unfunded liability will be recorded on the financial statements of the district and the colleges **and that the ending fund balance or reserves will decline**. Eventually, unless this liability is funded the district and the colleges' financial condition will deteriorate to a level that will make it difficult for colleges to meet the requirements of Standard III.D.
>
> **The Commission requests that the College provide information about how the ARC is being handled and how funds in an amount at least equal to the ARC are being paid into an irrevocable trust funding order to pay for liabilities as they become due** ..." (Letter, Beno to Chapdelaine, June 30, 2010, p. 3)

This action letter illustrates the ACCJC's demand for compliance with the GASB 45 ARC, even though it is official Commission policy that: "**Recommendations should not be based on the standards of ... organizations**. The relevant standards for the team are those of the Commission." (Team Evaluator Manual, 2011 ed., p. 22.) The ARC is a GASB 45 formulation, for purposes of the GASB 45 calculation, and there is no reference to the ARC in the 2011, 2012 or any of the Commission's policies, procedures, Standards, or Eligibility Requirements.

c. **San Jose City College - January 2011**. San Jose City College was placed on probation in a January 31, 2011 letter from Beno, which referred to OPEB:

> "The Commission requires institutions to clearly identify and plan for payment of liabilities and future obligations. The Commission requests that the San Jose-Evergreen Community College District **demonstrate how it plans to fund the Annual Required Contribution for its Other Post Employment Benefits**. Should the District not now be in a position to fund the ARC payment, it should describe its plans to address this long term obligation." (Eligibility Requirement: 17, III.D.1.b, c (Letter, Beno to SJCC, January 31, 20111; See Attachment OPEB - 7, p. 1)

224. ACCJC has also been inconsistent in enforcing its underground GASB 45 prefunding requirement.

a. **Santa Monica - March 2010**. The March 10, 2010 Evaluation Report to Santa Monica College demanded that the College do "better" than put away $3.4 million to prefund "GASB

45" OPEB benefits. (Evaluation Report, Santa Monica College, March 9-11, 2010, p. 55) The Report offered that the College "has made efforts to allocate funds to respond to the requirements of GASB 45 ... the amount the college contributed is a start, but is a minimal one. It is important that the college revisit this issue after the current economic crisis has been surmounted." *Id.* In contrast to its treatment of CCSF and some colleges, the Commission advised Santa Monica that it could defer dealing with prefunding until "after the current economic crisis has been surmounted." (*Id*., emphasis added)

b. The Santa Monica Team Report was accepted by the Commission, which *reaffirmed accreditation*, and issued an action letter that did not mention the College's inability to continue prefunding of GASB 45 "liabilities." In treating Santa Monica lightly, and coming down hard on CCSF for the same issue during the same economic crisis just a year and a half later, ACCJC was inconsistent.

225. Besides Mr. Kinsella, several trustees of the CCLC Retiree Health Benefits JPA have served as commissioners or have served on or chair evaluation teams.

a. Frank Gornick. Dr. Gornick is Chancellor of the West Hills Community College District, which consists of West Hills College in Coalinga and Lemoore. Gornick began his service for West Hills nearly two decades ago. Gornick served as Team Chair for the evaluation of the Peralta Community College District in April 2012, and thus was a chair in the same cycle in which he presumably voted on CCSF's accreditation. The Follow-Up Visit Report issued by his 2012 team assesses the District's methods of dealing with the "GASB 45 related OPEB liabilities." Report, pp. 3-6. The 2010 team also discussed OPEB extensively at pp. 3-4, 6-7. Gornick also was chair of the October 2009 Sacramento City College Comprehensive Evaluation Team, which also issued a report assessing the extent to which the Los Rios District is funding its OPEB liability in accordance with the Annually Required Contribution under GASB 45. (See Sacramento City College Evaluation Team Report, p. 41)

b. Numerous community college administrators who have served on the CCLC JPA board as trustees have served on or chaired ACCJC evaluation teams since 2005. These include, but are not limited to, Joe Wyse, Steve Crow, Lawrence Serot, Jerry Patton, Kindred Murillo, W Andrew Dunn, Ken Stoppenbrink, James Austin, Mazie Brewington, Thomas Burke, Bonnie Dowd, Sue Rearic, Rod Frese, James Austin, Deborah Wallace, Yulian Ligioso and Kimberly Allen.

226. It was the obligation of Steven Kinsella and Frank Gornick, as commissioners, to vote on whether to place CCSF on Show Cause or vote to disaccredit the college. It is assumed that they performed their duty to vote on accreditation of all colleges, including CCSF. The ACCJC has declined to indicate who voted and whether any commissioners were recused from voting or deliberating on these actions.

ACCJC Demands That CCSF Prefund Estimated OPEB Liabilities

227. On June 29, 2006, ACCJC notified CCSF it was fully reaccredited, and advised to submit a Progress Report in 2007 that focused on a recommendation regarding "Financial Planning and Stability." In turn, that recommendation referenced "address funding for retiree health benefit costs." Since the college had paid all actual retiree health benefit costs incurred in 2005-2006, the reference meant paying more funds into a "trust" - a sort of special reserve for retiree health benefits. The accompanying visiting team evaluation report discussed these benefits:

> "City College ... faces a major challenge concerning the long-term liability caused by *retiree health benefits*. In years past, the institution has paid its required premiums on a year-to-year basis, without making a provision for retiring this extremely large debt. A recent actuarial study conducted to determine the amount needed to fully fund the retiree health benefit plan has resulted in the identification of a total cost that is of great concern to the college leadership. The college is considering several strategies ... The team encourages the college to develop a plan to *address this long-term financial liability*. (Standard III.D.1.c.)" (2006 Evaluation Team Report for CCSF, emphasis added)

228. In 2007 CCSF submitted a Report to ACCJC which was "accepted" in June 2007. The Commission's letter simply "reminded" CCSF to submit a Focused Midterm Report on March 15, 2009, which should address the 2006 team's recommendations with special emphasis on Recommendation 4, Financial Planning, and its cryptic comment to "address funding for retiree health benefits."

a. CCSF submitted that Report, which clearly stated exactly what GASB 45 requires: the college's actuary determined the present value of the future estimated cost of retiree health benefits, and had included it on the District's financial statements. And then CCSF acknowledged what ACCJC had been coercing colleges to do:

> "The college did join the investment consortium sponsored by the Community College League for this issue, but has not deposited any money into the fund." (Report, p. 14)

b. The college Report offered various explanations for this, including that such matters were subject to collective bargaining and union agreements, as well as city voters measures.

c. On June 30, 2009 ACCJC accepted this Report, and asked CCSF for still another report, to be filed by March 15, 2010, which addressed two recommendations, one of them "Financial Planning and Stability," and which included the same brief reference to "address funding for retiree health benefits."

229. On March 15, 2010 CCSF filed its third post-accreditation report, this one a "Follow-Up Report." The Report was a mirror of the prior year - CCSF was still a member of the CCLC JPA, but still had not deposited funds. ACCJC accepted this Report too, and Beno wrote on June 30, 2010, bringing more pressure to bear on CCSF. She wrote that there was a "Commission Concern Regarding Other Post Employment Benefits (OPEB)" and essentially directed that CCSF explain to ACCJC "how funds in an amount at least equal to the ARC [Annual Required Contribution] will be paid into an irrevocable trust fund in order to pay for liabilities as they become due (ER 17 and Standard III.D.1.b. and c) in its next report, **the comprehensive self study, due in Spring 2012**." (Emphasis is Beno's) In letting Santa Monica have a pass in 2010, but expressing concern for CCSF, ACCJC acted inconsistently.

230. Beno had been told by CCSF in its 2009 and 2010 Reports that ACCJC had joined the CCLC JPA irrevocable trust, but not put any moneys into it. Now she "encouraged" CCSF to deposit money into an irrevocable trust with a veiled threat citing CCSF's obligation to prefund the "Annual Required Contribution" under GASB 45, and when CCSF was a member of the CCLC JPA trust. The veiled threat was this comment, that CCSF would have to "demonstrate that it meets these standards by fall 2012." *Id.*

231. CCSF never did fund the ARC as demanded by Beno.

232. Following CCSF's 2011 self-study and visiting team report in 2012, ACCJC placed CCSF on Show Cause at its June 6-8, 2012 meeting. The July 2, 2012, Beno letter referred directly to the college's failure to prefund OPEB:

> "Without sufficient cash flow and reserves to maintain financial stability and realistic plans for the future, CCSF will be challenged to maintain financial stability and realistic plans for the future ... the institutions short range financial plans do not incorporate plans for payment of future liabilities. the long range liabilities that have not been considered include post-employment medical benefits (OPEB) ... These liabilities clearly are a threat to the financial stability of the College ..." (July 2, 2012 letter, p. 3) The Commission letter recommended the college increase its reserve to "manage the financial impact of its unfunded, long-term liabilities." *Id.*, p. 6

233. The July 3, 2013 Disaccreditation order similarly relied on the college's failure to prefund OPEB. The order from President Beno referred the college to the 2013 team report, "For specific reference to the Eligibility Requirements and Accreditation Standards that CCSF was found by the evaluation team and the Commission not to meet ... the institution is referred to the Evaluation Report which connects each of its findings, conclusions and recommendation to the applicable Eligibility Requirements and Standards." (July 2, 2012 letter, p. 2)

234. The 2013 team report found that CCSF did not meet Standards III.D.1.b. and III.D.1.c. in regard to financial resources and financial plans and stability, and not funding OPEB was given as one of the main reasons: "Also, there is no final resolution of the issues related to the percentage of the budget that is dedicated to salaries and benefits, including the cost of unfunded liabilities, such as other post employment benefits. (OPEB). ¶ The college has not fully addressed long-term liabilities in order to provide a realistic assessment of financial resources available to support and sustain all obligtions and operations. A letter from ... the district's OPEB consultant" stated that contributions for the next 5 yeaars "wouldbe less than the ARC," although in subsequent years he predicted they would be enough to cover the ARC plus the "cumulative shortfall from the preceding five years. (Report, p. 48) The team concluded this was not good enough, that because the college had not done a 'full analysis of the impact of ... pay-as-you-go funding after the expiration of the [recently enacted, eight year long] parcel tax has not been included in the assessment of financial resources ..." the college "does not meet the Standards." (Report, pp. 48-49) In other words, the college was found not to meet the Standards for fiscal resources and stability because a) it was not paying the ARC and b) the team predicted it might be unstable in 9 to 30 years.

235. Beno's 2013 action letter added:

> "Finally, [CCSF] still has not addressed and appears to lack the capacity to address, the many financial management deficiencies (Standard III) identified by the 2012 Evaluation Team Report." (Action Letter, July 3, 2013)

236. In fact, CCSF did address these financial issues. During the years immediately prior to June 2012, CCSF suffered losses in State funding as a result of State budget problems and the recession. Anticipating a budget shortfall for the 2012 -2013 year, in or about June 2012, CCSF reached

agreements with bargaining units on wage and other reductions to address these losses. The concessions made by Local 2121 were designed to cover an estimated shortfall "attributable" to the faculty unit, and amounted to approximately $ 8 million. ACCJC's decree of the Show Cause sanction, announced on July 2, 2012, contributed to subsequent drops in enrollment, and further loss of State funds. In order to address budgetary issues and to provide increased future funding, the citizens of San Francisco passed Proposition A on the November 2012 ballot. Proposition A, a tax of $79 per parcel, is expected to generate about $16 million annually during the next eight years for City College of San Francisco. The funds were designed to be used to offset state budget cuts, keep libraries open, provide workforce training and continue offering core academic courses such as English, math and science. In November 2012, the people of the State passed Proposition 30, to also secure further funding statewide for the community colleges. ACCJC's conclusion that CCSF lacked the "capacity to address" "financial management deficiencies" is arbitrary, capricious and unreasonable. In reality, CCSF showed it had the capacity to address any of its legitimate financial issues, and was sufficiently successful that the administration indicated in 2013 that it had achieved anticipated revenues sufficient to create a reserve larger than the State recommended minimum reserve of 5 %. Hence, such financial problems as CCSF might have had did not warrant Show Cause or Disaccreditation in view of the circumstances.

The Unfair and Unlawful Business Practices Over the Prefunding of Retiree Health Benefits Costs

237. As alleged above in the section dealing with Mr. Crabtree's assignment to the 2012 ACCJC evaluation, ACCJC's policies, California law and Federal regulations prohibit conflicts of interest, or their appearance, in the accreditation process. ACCJC engaged in serious conflicts in using prefunding of GASB 45 - the ARC - as a criteria for financial resources and stability. Moreover, in using OPEB prefunding as a criteria for finding CCSF deficient in fiscal resources and stability, and in then relying on those deficiencies to disaccredit CCSF, ACCJC violated numerous provisions of its own policies, California law, and Federal regulations. **.**

238. ACCJC engaged in conflicts of interest, or the appearance of conflicts of interest, by appointing to its evaluation teams, including the CCSF team in 2013, individuals who also served as trustees (or alternate trustees) of the CCLC Retiree Health Benefit JPA trust, during the period of their

appointment to a team, or immediately before. It also appointed administrators from colleges who were members of the CCLC JPA trusts. These conflicts of interest or appearances of conflicts, were unfair and unlawful, in that they violated the Federal regulations set forth above in the "Crabtree conflict" section of this Complaint. They also violated ACCJC's own policies, which forbid actual or apparent conflicts of interest by the acts and conduct described below. Moreover, they violated California's common law fair procedure doctrine, and ACCJC's fiduciary obligation to its member colleges (such as CCSF) and to the public.

a. By appointing Steven Kinsella to the Commission, and its Task Force on finances, and to serve as the chair or a member of numerous ACCJC evaluation teams, the ACCJC and Mr. Kinsella engaged in a conflict of interest or the appearance of a conflict of interest. In addition, if Mr. Kinsella participated in the Commission's discussion, vote or decision-making in regard to CCSF in 2012 and 2013, the Commission and Mr. Kinsella participated in a conflict of interest or the appearance of a conflict of interest.

b. In appointing Frank Gornick to the Commission, and to numerous evaluation teams, some as Chair, and if it allowed him to participate in discussions of and vote on accreditation decisions involving CCSF and other colleges, and by authorizing him to act or speak on behalf of the ACCJC in regard to the accreditation of CCSF, the ACCJC has violated these same regulations, and ACCJC and Mr. Gornick engaged in conflicts of interest or the appearance of conflicts of interest.

239. Federal law and regulations impose several requirements to assure that an accreditor's standards are "published" (34 CFR § 602.18(a)), adequate and clear Standards and written specifications of deficiencies (20 USC § 1099b(a)(6)(A)(1); 34 CFR §§ 602.17(f), 602.18(b), and 602.25(a)), and set forth their Standards in written materials for the benefit of the public and colleges (34 CFR § 602.20). Clear standards and adequate written specifications are defined by the USDE as a requirement for "due process." (34 CFR s 602.25) Assessment of a college's "OPEB" prefunding was not set forth within a written ACCJC rule when the evaluation team visited CCSF in March 2012, nor was it adopted in an element of a standard until on or about June 7, 2012. Hence, the GASB 45 "standard" has been implemented as an "underground" regulation. ACCJC is not allowed to base assessments on underground rules, as is apparent under the law and regulations listed above. ACCJC's evaluation of

OPEB is in violation of these requirements.

240. **Clear, written and published standards are also a requirement of the ACCJC's own policies, procedures and Standards.** Thus, the Commission declares:

a. The accreditation Standards and Commission policies "will provide a clear statement of ultimate Commission expectations of institutional performance and quality." (Eligibility Requirements for Accreditation, Introduction).

b. Accredited institutions undergoing periodic review for continued accreditation are "reviewed by the ACCJC under defined and published policies and procedures that conform to the recognition requirements of the U.S. Department of Education." (ACCJC Policy on Public Disclosure and Confidentiality in the Accreditation Process, The Commission's Responsibilities, Section 1).

c. The Commission has the responsibility to ... make decisions solely on the basis of published standards, policies and procedures ... avoids conflicts of interest in the decision-making process ..." (Policy on the Rights and Responsibilities of the ACCJC and Member Institutions, Section E).

241. The public policy of the State, confirmed by the State Chancellor's Office, indicates that community colleges are not required to "prefund" their estimated GASB liabilities. The State Chancellor's office, as authorized by law, issued an Advisory to all of the community colleges in 2010, stating that "GASB 45 ... does not require funding the ARC: districts can continue using the Pay-As-You-Go approach ..." (June 14, 2010 Fiscal Services Advisory of the Chancellor's Office, p. 1) In evaluating CCSF and other colleges regarding their prefunding of estimated OPEB liabilities, ACCJC has run afoul of the law and public policy of California.

242. Federal law dictates that an accreditor cannot inquire into or evaluate an institution's fiscal resources or capacity, when it is backed by the full faith and credit or the government. (20 USC § 1099b). California community colleges are part of a statewide system, and local colleges hold property in trust for the State. The State backs the college with its full faith and credit, hence it is illegal on this basis as well to evaluate a purported indicator of fiscal capacity or stability such as OPEB prefunding.

243. In 34 CFR section 602.21(a), an accreditor is required to use standards that are "adequate to evaluate the quality of the education or training provided by the institutions" it accredits "and relevant

to the educational or training needs of students." Similarly, section 602.16(a) requires that an accreditor's accreditation standards address the quality of the institution in regard to fiscal capacity appropriate to the specified scale of operations. OPEB prefunding violates this requirement.

244. ACCJC's policy states that its "Recommendations should not be based on the standards of governmental agencies, the legislature, or organizations. The relevant standards for the team are those of the Commission." (ACCJC Team Evaluator Manual, 2011 ed., p. 22) In purporting to enforce GASB 45 and prefunding through an "irrevocable trust," pursuant to a formula for the "ARC" established by a private organization of accountants, the Government Accounting Standards Board, the ACCJC has acted inconsistently to apply the standard of a private agency.

245. Consistency in decision-making and evaluation is a requirement of accreditors, according to Federal law. ACCJC is required to avoid the inconsistent application of its Standards. (34 CFR § 602.18(b)). ACCJC is required to avoid the inconsistent application of its Standards by its own policies, State law on common law fair procedure, and Federal regulations forbids arbitrary and capricious conduct. Its enforcement of OPEB prefunding as a criteria has been inconsistent.

246. As alleged above, 34 CFR Section 602.13 requires that accreditation procedures must be widely accepted. In evaluating colleges on whether they are prefunding estimated liabilities for OPEB, the ACCJC has applied standards which are not widely accepted by other accreditors or educators.

247. ACCJC accredits a college for a period of approximately 6 years. 34 CFR section 602.18, which deals with ensuring consistency in decision-making, provides that an agency must evaluate the education or training offered by an institution or program to determine if it "is of sufficient quality to achieve its stated objective for the duration of any accreditation ... period granted by the agency." In evaluating OPEB prefunding, The ACCJC has no legitimate basis upon which it can reliably predict whether a college's failure to pay the ARC will or will not have an adverse impact on the quality of education over a period of 6 years, or 10, or 20 or 30. ACCJC violates this regulation by evaluating a college's prefunding by a formula which applies to a period of 30 years.

248. California law forbids ACCJC to act arbitrarily, capriciously, unreasonably or invidiously in conducting its accreditation evaluations, for such would violate common law fair procedure. In using OPEB ARC prefunding, ACCJC violates these requirements, and has abused its authority as an

accreditor. Among other things, the use of OPEB to gauge a college's fiscal resources and stability over the period of accreditation - six years - is arbitrary and unreasonable. Moreover, ACCJC disregarded the recent parcel tax enacted by the citizens of San Francisco in November 2012, which provides millions of dollars in additional funding for a period of eight years. And, ACCJC disregarded the State's advisory notice, which approved of the use of the pay-as-you go plan to pay for estimated future retiree health benefits. Notably, prefudning of OPEB was not even referenced in ACCJC standards until June 2012, and hence was an underground regulation when applied to CCSF in June 2012. In not respecting the public policy of California, which recognizes this method, ACCJC violated common law fair procedure. In addition, Federal law dictates that when a state backs an institution with its full faith and credit, the accreditor has no business assessing fiscal resources or stability. (see 20 USC § 1099c) Federal law provides that the Department of Education "shall determine an institution to be financially responsible ... if ... such institution has its liabilities backed by the full faith and credit of a State, or its equivalent. " 20 USC § 1099c. As part of a community college system which is required by the California constitution, the state effectively backs districts with its full faith and credit. Article IX, section 14 of the California Constitution clearly establishes that it is the California Legislature which bears the ultimate responsibility for establishing and maintaining school districts.

249. Moreover, ACCJC's own policy indicates that it adopts Standards which are "necessary conditions" for high-quality education. (ACCJC website, description of Standards, last accessed Sept. 22, 2013) ACCJC policy dictates that its standards must assure a "threshold level of quality." (Commission Statement on the Benefits of Accreditation, p. 2) It also declares that its standards are "established standards of good practice in higher education." *Id*., p. 2. The allegations herein establish that ACCJC has violated these policies by relying upon OPEB prefunding as a criteria of accreditation of CCSF and other colleges.

250. In summary, ACCJC engaged in an .encumbering conflict of interest involving the CCLC JPA and its efforts to build its retiree health benefit JPA, and violated numerous commission policies, Federal regulations, and State law, in using prefunding of OPEB as a criteria of fiscal resources and stability, thereby materially and prejudicially preventing a fair, impartial and objective evaluation of CCSF. The facts thus establish pervasive unfair and unlawful business practices in violation of section

17200.

ACCJC Had a Conflict of Interest or the Appearance of a Conflict in Evaluating CCSF While it Advocated for Legislation Opposed by CCSF, and Which Would Have Changed the College's Mission

251. The open-access mission of the California community colleges came under intense Legislative and public debate in 2011 and 2012, when diametrically-opposed bills were introduced to cope with the impact of the economic recession, strained financial resources, and proposals to eliminate California's mission of open access to the community colleges and "improve" student success or "ration" community college education.

252. A primary moving party behind "rationing" higher education by changing the mission was the Student Success Task Force, created by the State Chancellor's Office in January 2011, the Campaign for College Opportunity, the Community College League of California, the Association of California Community College Administrators, several community college districts, and various trade associations and interest groups.

253. In opposition to those proposing to ration community college education stood a coalition of student and other groups who advocated for retaining the historic "open access" mission of the community colleges as envisioned when the Master Plan was enacted. Its titular leader was City College of San Francisco.

254. Also opposing the change were labor organizations which, together, represented the faculty of all but one California community college district, the California Federation of Teachers, the California Community College Independents Association, and the California Teachers Association.

255. The Chancellor of the California Community Colleges appointed the Task Force, composed of approximately 20 members. They were mostly college administrators or board members, and four faculty representatives. From the beginning the Task Force as an entity had a predetermined goal of eliminating the "open access" mission. The first draft of their proposals was issued on April 30, 2011, and a second draft in December 2011.

256. These proposals generally adhered to the notion that the Master Plan and mission needed to be drastically changed, to minimize or eliminate the open access rule, and change the focus of the community colleges to adults ages 18-24, especially those with clearly defined vocational goals, as

opposed to the lifelong learning model in place for decades. It would have required students to decide on their program of study shortly after enrolling in the community colleges *or else they would not qualify for Board of Governor's Fee Waivers*. They would have been required to declare a major by the end of their second term. In contrast, students at UC and CSU are not required to declare a major until the end of their second year. It declared that *students that had made greater progress toward their specific educational goals, would be prioritized in class enrollment*, and *those that had not would lose their enrollment priority*. It also would have *created a disincentive for students to change majors or "linger" in the community colleges*. Students with more than 110 units and those with less than a 2.0 grade point average would be ineligible to receive fee waivers from the Board of Governors. Heretofore, the community colleges had recognized and served "life-long learners."

257. Several controversial Task Force Recommendations were proposed in a bill denoted as SB 1456. The original version, that was publicly supported by the ACCJC, contained many more stringent requirements for obtaining Fee Waivers from the Board of Governors than were contained in the ultimately chaptered version of the bill. Board of Governors Fee Waivers are given to financially needy students as a method of helping them pay for school. This fee waiver system had historically been considered as central to helping California achieve its open access mission. This issue was one of the most contentious of the Task Force's Recommendations.

258. On October 27, 2011, the San Francisco Community College District's Governing Board unanimously adopted a Resolution rejecting the Task Force's recommendations and proposals as being inconsistent with CCSF's mission. because they would "deny access to a community college education to many different communities and reduce local autonomy to serve those communities. "

259. On November 14, 2011, CCSF students, employees and one trustee held a large public rally opposing the Task Force's recommendations, which attracted considerable media attention. Board President Rizzo issued a press release criticizing the recommendations. CCSF Chancellor, Donald Griffin also spoke against the Task Force.

260. On January 9, 2012, the Board of Governors held a public hearing to consider adopting the Task Force recommendations. The meeting was dominated by the 13 students, 10 faculty and administrators *from CCSF*, who strenuously objected to the Task Force's recommendation. Despite the

opposition, the Board of Governors voted to "accept" the recommendations.

261. The Task Force distributed two newsletters touting its proposal and its supporters. The first newsletter, issued January 24, 2012 explained that the Task Force's recommendations "create new efficiencies ..." in the face of severe budget cuts and exclusion of students because of fiscal problems. It identified the "Key Supporters" of the Task Force, beginning with,

> "The **Campaign for College Opportunity**, Alliance for a Better Community**, Accrediting Commission for Community and Junior Colleges** ..." (Emphasis added)

262. The Task Force issued another Newsletter, for February 2012, which listed ACCJC as "voicing support for the Task Force recommendations," along with the Campaign for College Opportunity. At this point, the CCSF evaluation team visit was just six weeks away, and ACCJC had already appointed the visiting team, of nearly all administrators.

263. On February 17, 2012, AB 1741, an alternative supported by opponents of the Task Force, was introduced. It was opposed by the State Chancellor's Office.

264. On April 9, 2012, just three weeks after the site visit to CCSF by the evaluation team appointed by ACCJC, Barbara Beno, on behalf of the ACCJC, wrote strong letters of support to each of the State senators who belonged to the Senate Education Committee, urging adoption of SB 1456. She emphasized that "*ACCJC accredits all of the California community colleges*," adding:

> "**I am writing to express the Accrediting Commission for Community and Junior Colleges' strong support for SB 1456** ..., the Student Success Act of 2012. This ambitious piece of legislation stems from recommendations put forth earlier this year by the Student Success Task Force and demonstrates a commitment to both eliminating barriers to student success and **adopting the type of scalable student-centered changes that our state desperately needs**."
>
> "**We strongly urge you to support SB 1456** .. when it comes before you in the Senate Education Committee. **We hope you will join the growing number of equity advocates, students, educators and business leaders urging you to adopt the proven policies and practices that can truly put students first. The time is now; we cannot afford to wait**." (*Id*., emphasis added)

265. SB 1456 was heard by the Senate Committee on Education on April 18, 2012. The Bill Analysis dated April 17, 2012, delineated the support as including **ACCJC**, the **Campaign for College Opportunity**, the Association of California Community College Administrators, California Competes, the Community College League of California, and others. Among the community college districts now supporting it were Santa Monica and Long Beach, and the Chancellor of San Diego. Other supporters

included various business and educational-related groups. The Committee unanimously approved the bill. Santa Monica, as mentioned above, not only joined with ACCJC in opposing the "open access" mission, but has been given a "pass" on OPEB pre-funding in June, 2010.

266. The opposition of CCSF and others groups proved effective with the Legislature, and the bill soon began to be whittled down. A May 25, 2012 Legislative report again listed the supporters - including ACCJC and several college districts: San Diego, Kern, Long Beach, Los Angeles, Los Rios, San Bernardino and State Center. ACCJC had appointed the administrators from KERN to lead the , CCSF 2012 accreditation evaluation team.

267. By the end of April 2012 the bill, as originally conceived, was doomed. Still, on June 13, 2012 **president Beno**, **on behalf of ACCJC**, wrote more letters to several legislators, expressing "strong support for SB 1456 ..."

268. During the time the Campaign for College Opportunity was supporting "student success" along with the ACCJC, the ACCJC through President Beno, Vice Chair Kinsella, and Vice President John Nixon, served as advisory board members and supporters of the CCO. The CCO advances a partisan agenda regarding the community colleges mission, and strongly supported the original vision of SB 1456 and the Task Force. The CCO also works closely with the Community College League of California, which supported the original version of SB 1456. The CCO acknowledges that, "at the forefront of our work is an ambitious policy agenda." *Id*. The CCO was identified by the Task Force as a key sponsor of SB 1456 in February 2012. During this same period, it has been a "conference partner" of CCLC, as had ACCJC.

269. As alleged above, ACCJC's policies, California law, and Federal regulations forbid ACCJC to engage in or appear to have a conflict of interest. ACCJC cannot be impartial, nor appear to be, when it takes sides against a college it is evaluating, over one of the issues under review - such as CCSF's adherence to its open access mission. ACCJC's opposition to CCSF, its advocacy for the Task Force recommendations and SB 1456, violated its own conflict of interest requirement, and those of 20 USC section 1099b, 34 CFR section 602.15(a)(6), and California law, since ACCJC was an *adversary* of CCSF.

270. ACCJC is under a legal duty to *respect the declared mission of California's community*

colleges, a duty which is imposed by 20 USC § 1099b(a)(4)(A) and 34 CFR § 602.18. The Student Success Task Force and SB 1456 were efforts to *significantly change the mission* of the community colleges. In this way it also violated its own policy on "Good Practice," and its fiduciary duty to its member, CCSF. Those violations also interfered in the rights of the beneficiaries of this relationship - the students, and the residents of San Francisco. ACCJC cannot carry out its duty to apply and enforce standards which reflect the stated mission of colleges, when it engages in political efforts to change that mission as happened here. The essence of an ACCJC review is *impartiality*, and fairness. It does not appear to be fair, and was not impartial, given its advocacy.

271. ACCJC's political advocacy also violated the requirements of 20 USC section 1099b, which requires that ACCJC be <u>independent</u> of trade associations or membership organizations. ACCJC worked in parallel with two trade organizations which publicly supported the Task Force and the bill: the Community College League of California and the Campaign for College Opportunity. These conflicts of interest directly prejudiced ACCJC's issuance of a Show Cause sanction, and later disaccreditation, because the political battle between ACCJC and CCSF occurred during the same time period that ACCJC was evaluating CCSF, and evaluating CCSF over its mission, an issue inextricably intertwined with that evaluation. ACCJC's accreditation evaluation found fault with CCSF's failure to "readjust" its mission when, concurrently, ACCJC was trying to forcefully change CCSF's mission through legislation, and had publicly declared its opposition to that mission.

272. In the midst of the ACCJC's political activities, it trained the CCSF site visit team and, upon information and belief, informed the team that CCSF had not responded to the Commission's suggestions and deficiencies previously identified in 2006. The Commission staff, including Beno, would soon be reviewing the Evaluation Team's draft Report and, later, upon information and belief, the Commission recommended a harsher sanction than those the team had discussed. ACCJC should not have engaged in these political activities, or, having done so, it could not fairly and legally evaluate CCSF.

In June 2012, The ACCJC Decided to Place CCSF on Show Cause Sanction, One Step from Disaccreditation

273. The ACCJC team visit had been held from March 11 - 15, 2012 at CCSF, and drafts of the team's site-visit evaluation report were circulated with the team. At some point one or more drafts

were reviewed by ACCJC staff, and a final version was completed. Thereafter, the ACCJC held its regular, biannual meeting on June 6-8, in Burlingame, CA. Prior to the meeting the site visit report, CCSF's "self-study" and other documents were provided to the commissioners when they arrived for the meeting. (Below we allege this information was provided just one day before the meeting.) The materials given to the commissioners were supposed to include, under ACCJC policy, the "action recommendation" of the site-visit team - a written, signed recommendation for action - anything from accreditation to a sanction. (We allege, on information and belief, that no such written, signed action recommendation was obtained from the site-visit team.)

274. During its meeting, the Commission held a "closed" session - meaning the public was not allowed to attend - at which they decided to place CCSF on Show Cause sanction. The Commission has never disclosed to the public any record of the discussion at the meeting. Whether there was a vote, what it was, whether the Commission president made an oral recommendation, whether any commissioners were recused from participating in the discussion or any vote, are unknown.

275. On July 2, 2012, President Beno's letter announcing the Show Cause decision was sent to CCSF and soon distributed to the public. Beno's letter (and the team report) constitutes the only known explanation of the Decision made in June by the Commission.

276. As discussed below, he burden of proof in regard to satisfying Requirements or Standards under ACCJC's written policy lies with the Commission itself, unless a college has *already been placed* on Show Cause status, in which case the burden rests with the College. Below we allege that in June 2012 the ACCJC improperly shifted to CCSF the burden of proving it should not receive a Show Cause sanction. Without shifting the burden of proof, ACCJC could not have established that Show Cause should have been issued.

277. Under Federal law and ACCJC policy, ACCJC is allowed to provide a college with up to two years to resolve deficiencies, and may allow more time for good cause. ACCJC gave CCSF only 9 and ½ months, even though ACCJC had never before sanctioned CCSF nor identified any deficiencies. ACCJC has frequently given colleges at least two years, and sometimes more time, to resolve deficiencies, particularly lesser deficiencies such as Warning or Probation. As we discuss below, had ACCJC not acted improperly, and had there been, in theory, legitimate grounds to sanction CCSF, a

sanction of Show Cause was too severe. And even if Show Cause could have been justified, providing less than two years to correct deficiencies, was arbitrary, capricious, unreasonable and unfair under the circumstances.

278. Prior to its placing CCSF on Show Cause, ACCJC had never placed any California community college on this sanction without first attempting to resolve "deficiencies" through Warning or Probation. A non-California college, the College of the Marshall Islands spent Spring 2003-Summer 2004 on Probation before being placed on Show Cause in Summer 2004. The College of the Redwoods spent Spring 2006-Summer 2008 going back and forth between Warning and Probation, before Show Cause was finally issued in Spring 2012. Cuesta College spent Spring 2009- Spring 2010 on Warning and Spring 2010- Spring 2012 on Probation before Show Cause was imposed in 2012. The non-California Northern Marianas College spent Spring 2004-Spring 2005 on Warning and Spring 2007-Spring 2008 on Probation. Show Cause was then imposed in Spring 2008.

279. On Tuesday, September 11, 2012, the CCSF trustees voted 6-1 to invite a special trustee from the state to come and oversee their finances. The vote did not come easily as the board of trustees was met by angry student protestors, urging heavily for the trustees to oppose a special trustee. They shouted "Resign! Resign!" at the trustees and it wasn't long before police involvement occurred. The Special Trustee was strongly recommended by State Community College leaders. CCSF at the time was warned by the State Chancellor's Office that if the trustees didn't voluntarily request a special trustee, then the State Chancellor's Office would have imposed on CCSF and the elected trustees would have lost any and all of their decision-making power.

280. As alleged in this Complaint, ACCJC's actions towards CCSF were the result of unlawful and unfair business practices.

ACCJC Unfairly and Unlawfully Put the Burden of Proof on the Accredited CCSF in 2012, In Violation of ACCJC's Own Policies

281. The July 2, 2012 letter from Beno and the team report indicate that CCSF was placed on Show Cause sanction because it had been found by the Commission to be in substantial non-compliance with the Commissions Requirements, Standards or policies, or had not responded to conditions imposed by the Commission. In fact, the Commission did not "find" non-compliance in several cases. Rather, it

indicated it could not decide if there was non-compliance. Federal law demands that ACCJC "apply its standards consistently." (34 CFR § 602.18) ACCJC failed to do this when it determined CCSF warranted the Show Cause sanction, because it shifted the burden of proof to ACCJC to demonstrate it warranted continuation of accreditation, when the burden is on ACCJC to find that a college does not merit continued accreditation.

282. The Commission Policy provides that a college that is already on "Show Cause" sanction has the *burden of proving* it satisfies ACCJC standards when at a later date ACCJC considers whether to remove the sanction. This shifting of the burden of proof following the issuance of a Show Cause order indicates that before a Show Cause order is issued ACCJC has the burden of proof when it considers whether to place a college on one of the three sanction levels, particularly the Show Cause standard. The language of the Policy underscores that Show Cause is a more serious sanction than warning or probation, and that when a college is placed on Show Cause, the burden of proof lies with a college to be removed from that sanction:

> "In such cases [of Show Cause status] the burden of proof will rest on the institution to demonstrate why its accreditation should be continued." (Commission Action on Institution, Accreditation Reference Handbook, 2011 ed., p. 42)

283. When the Show Cause provision is considered in the context of ACCJC's policies, it becomes apparent that in June 2012, the Commission shifted the burden of proof to CCSF. At that time, CCSF was still fully accredited, with no sanctions outstanding against it. In such a case, the burden rests with the Commission to establish that a college no longer warrants fully accredited status, thereby justifying sanctions such as Warning, Probation or Show Cause. Thus:

> "C. Order Show Cause. When the Commission <u>finds</u> an institution to be in substantial non-compliance with Eligibility Requirements, Accreditation Standards, or Commission policies, or when the institution has not responded to the conditions imposed by the Commission, the Commission will require the institution to Show Cause why its accreditation should not be withdrawn at the end of a stated period by demonstrating that it has corrected the deficiencies noted by the Commission and is in compliance with the Eligibility Requirements, Accreditation Standards or Commission policies. <u>In such cases, the burden of proof will rest on the institution to demonstrate why its accreditation should be continued</u> ..." (Policy on Commission Actions on Institutions, pp. 41-42, emphasis added.)

284. In the Show Cause letter, the Commission affirmed its faith in and reliance on the Report of the Evaluation Team. "For specific reference to the Eligibility Requirements and Accreditation Standards that CCSF was found by the evaluation team and the Commission not to meet ... the

institution is referred to the Evaluation Report which connects each of its findings, conclusions ... to the Eligibility Requirements and Accreditation Standards." (July 2, 2012 Show Cause letter, p. 2.)

285. Review of the 2012 CCSF site visit team's evaluation report confirms that while the team remarked that a "mountain" of evidence was presented in regard to the various Requirements and Standards, the team was "unable" to "verify" that CCSF met these factors.

a) "... the team was *unable to verify* if such a [financial] model was used for planning..." (Evaluation Report, p. 14];

b) "The visiting team *could not confirm* that City College of San Francisco adheres to the Eligibility Requirements and Standards of the Accrediting Commission." (*Id*., p. 19);

c) "Whether the institution provided information that is complete and accurate ... is *unclear* based on allegations that were not proved or disproved during the visit." *Id.*,p. 19];

d) "... it is *less clear* how effective this dialogue has been ..." (*Id*., p. 24);

e) "It is ambiguous whether human resources planning is integrated with institutional planning." "Moreover, *not enough data exists to systematically assess* the effective use of human resources ..." "As a result, *it is unclear* whether or not the goals have been achieved or assessed." (*Id.,* p. 47)

286. Since the 2012 team was "unable to verify" or found it "unclear" or "could not confirm" whether CCSF still met the Standards and Requirements, the *status quo* of accreditation should have remained in effect. Alternatively, the Team or Commission could have sought further clarification or information. It did neither. Instead, it treated its *own inability to determine* the college's satisfaction of the Standards as grounds to sanction the college. Instead of affirmatively "finding" that had CCSF did not meet the Standards and Requirements, it relied instead on its team of experts' inability to verify CCSF's meeting standards, and its conclusion that CCSF had "failed to demonstrate" it met the Commission's Standards and Requirements. In this way, it reversed the burden of proof.

287. The ACCJC reached a plainly erroneous and unreasonable conclusion in 2012, inconsistent with its policies and procedures. Commission policies materially <u>differentiated</u> between the burden of proof for colleges on Show Cause status, versus those not on Show Cause. Despite this difference, ACCJC placed the burden of proof on CCSF to demonstrate that it met Commission

standards and requirements, even though CCSF had a full reaffirmation of accreditation in Spring of 2006. In determining that CCSF had not met its burden of proof, the Commission, like the team, explained:

> "Show Cause was ordered ... because the College has failed to demonstrate that it meets the requirements outlined in a significant number of Eligibility Requirements and Accreditation Standards." Sanction Letter, p. 1.

288. The shifting of the burden of proof in 2012 was an unfair and unlawful business practice, as it violated ACCJC policy, and was an inconsistent action in violation of 34 CFR section 602.18.

289. The July 2, 2012 action letter ordered CCSF to submit a "Special Report" by October 15, 2012, describing how it would address certain issues - its mission, institutional assessments, and planning and budgeting issues. In addition, ACCJC required that CCSF complete a "Show Cause Report" by March 15, 2013, and a "Closure Report" by March 15, 2013, explaining how it would close the College once it was disaccredited. Without accreditation, CCSF could not continue to operate, given that it would no longer qualify for Federal funds, or Federal aid to its students, and would no longer satisfy the requirements of California law.

290. The July 2012 letter from Beno decreed that CCSF had to "show cause why accreditation should not be withdrawn by the Commission at its June 2013 Commission meeting. And it emphasized, "The burden of proof rests on the institution to demonstrate why its accreditation should be continued." (Emphasis in original.)

291. Beno's letter directed that the college disseminate the Evaluation Report and "this action letter" to College staff, campus leadership, and the Board of Trustees, and be made available to the students and the public. CCSF posted them on its website, as the ACCJC indicates is appropriate to accomplish notice.

292. ACCJC stated, "Federal regulations require the Commission to post a Public Disclosure Notice (PDN) for institutions placed on ... Show Cause ... " to "inform the public of the reasons for such a severe sanction." The ACCJC supplied the college with a draft PDN with the letter, and later the notice was posted on the ACCJC's website. The PDN recited the Eligibility Requirements and Standards which it had concluded CCSF was out of compliance with. The Notice also mentioned that CCSF had been evaluated by a "team of professional educators."

293. The ACCJC reached a plainly erroneous conclusion, inconsistent with its policies and procedures, and Federal and State law, retroactively converting suggestions for improvement into deficiencies, and relying on the College's supposed disregard of those recommendations to justify Show Cause status. It applied the burden of proof applicable when a college is on Show Cause status, to deciding whether CCSF, which was accredited, should have been placed on Show Cause status. The Show Cause decision announced on July 2, 2012 was an unfair and unlawful business practice, which violates ACCJC policy and Federal regulations. Hence, the decision to place CCSF on show cause status should be reversed. Currently, this Show Cause status continues while CCSF is "seeking review" or appealing its disaccreditation.

294. The ACCJC's Show Cause sanction caused immediate catastrophic impacts on the College's Bond ratings.

a) On July 9, 2012, a mere week after the ACCJC decision placing CCSF on Show Cause status was announced, Fitch Ratings downgraded the college's General Obligations (GO) bonds. The 28.1 million 2002 GO bonds (election of 2001, series A) was downgraded to 'A.' Due to this decrease in rating, the bonds were placed on a "Negative Rating watch." According to the Fitch Ratings service, "The board of supervisors of the city and county of San Francisco (the city) is obligated to levy and collect ad valorem taxes upon all property within the district subject to taxation without limitation to rate and amount, to pay debt service on the bonds." (See "Fitch Dwngrds San Francisco Community College District's (CA) Gos to 'A'; Rating Watch Negative"; at: www.businesswire.com/news/home/20120709006699/en/Fitch-Dwngrds-San Francisco-Community-College-Districts ; last accessed, September 17, 2013)

b) Fitch Ratings made the move to downgrade CCSF as a direct result of the Show Cause action letter from ACCJC. Fitch had increased concern over the financial management capabilities that were written about CCSF by the ACCJC. The Negative Rating Watch reflects concerns about whether or not the district has the ability to adequately address the "14 commission identified fiscal, management and planning recommendations (many dating from 2006) and successfully maintain accreditation." (See "Fitch Dwngrds San Francisco Community College District's (CA) Gos to 'A'; Rating Watch Negative"; at: www.businesswire.com/news/home/20120709006699/en/Fitch-Dwngrds-San Francisco-

Community-College-Districts ; last accessed, September 17, 2013)

c) At the same time as the downgrade, Fitch stated that should there be a decision regarding the loss of accreditation, it would more than likely cause another downgrade in ratings because state and federal funding would be disrupted and there would be a risk of closure.

d) In November 2012, CCSF's GO bonds took another hit from Fitch Ratings. This time the college was downgraded from an 'A' to 'A-' and the Negative Rating watch to a Negative Outlook. All this, despite the fact that the voters of San Francisco had just approved a key ballot measure in November which would increase district revenues over the upcoming 8 years; and, the voters of the State had approved Proposition 30, which had a similar impact on increasing colleges revenues. Regardless of these facts, Fitch Ratings determined that it still had concerns over the risk of continuing financial struggles, especially if the district was unable to, "make substantial expenditure reductions." (See "Fitch Downgrades San Francisco Community College District's (CA) Gos to 'A-'; Outlook Negative" ; at: finance.yahoo.com/news/fitch-downgrades-san-francisco-community- 214600442.html ; last accessed, September 17, 2013)

e) According to Fitch, the threat of disaccreditation stemmed from the fact that the district has been underfunding administrative functions and had a shared governance structure that had basically failed them. This information likely was received from ACCJC's evaluation reports and July 2012 action letter. Fitch also determined that while CCSF debt levels are moderate, "the district faces substantial liabilities for employee pensions and other post-employment benefits." (See "Fitch Downgrades San Francisco Community College District's (CA) Gos to 'A-'; Outlook Negative" ; at: finance.yahoo.com/news/fitch-downgrades-san-francisco-community- 214600442.html ; last accessed, September 17, 2013)

f) Fitch noted that the college's available fund balances dropped to around $4.5 million (2.25% unrestricted revenues) at the end of the 2012 fiscal year, as compared to "a 5% minimum state standard for similar institutions." Further, "the district's success in attaining structural balance will depend on its ability to reduce employee salary and benefits costs, which comprise approximately 92% of its unrestricted budget." (See "Fitch Downgrades San Francisco Community College District's (CA) Gos to 'A-'; Outlook Negative" ; at: finance.yahoo.com/news/fitch-downgrades-san-francisco-community- 214600442.html ; last accessed, September 17, 2013) This was a criticism made by ACCJC, as alleged above. Fitch also had concerns over the accuracy of reported financial information from CCSF, due to ACCJC's findings.

f) Fitch also mentioned OPEB and stated what ACCJC had expressed, that since the District's OPEB is funded through the pay-as-you-go method, this results in a growing liability for these benefits.

g) On March 27, 2013 CCSF's GO bonds were once again downgraded, this time from 'A-' to 'BBB+'. The rating outlook remained Negative. According to Fitch the downgrade was based on CCSF's mixed progress results in regards to accreditation. Fitch refers to CCSF's changes as "correcting deficiencies" despite the evidence, alleged above, that CCSF had not had any deficiencies identified by ACCJC until its July 2012 action letter. Fitch's downgrading decisions were based on the analysis made by the ACCJC. Fitch assumed that the district would continue operating regardless of ACCJC actions and anticipated the State would become more involved or potentially have the college managed by a neighboring community college district. Fitch was optimistic, however, that ACCJC would reduce the college's sanction status to Warning or Probation, "Fitch notes the February 2013 removal of two California community college districts (College of the Redwoods and Cuesta Community College) from show cause status as an indication of how the ACCJC may choose to respond...a change in status to probation or warning would provide the district with an additional year to address accreditation deficiencies." (See "Fitch Downgrades San Francisco Community College District's (CA) Gos to 'BBB+'; Outlook Negative ; at: www.businesswirre.com/news/home/20130327006398/en/Fitch-Downgrades-San-Francisco-Community-College-Districts ; last accessed, September 17, 2013)

h) Fitch acknowledged that CCSF would stand to gain another year to satisfy ACCJC, allowing for the college to come into compliance with ACCJC Standards, if their sanction level were reduced.

AFT 2121 and CFT File Complaint Against ACCJC on April 30, 2013Arising Out of ACCJC's July 2, 2012 Show Cause Order And ACCJC Policies, Procedures and Actions More Generally

295. On April 30, 2013 three representatives of the CFT and AFT 2121 arrived at ACCJC's offices in Novato and submitted to the ACCJC a combined Complaint and Third Party Comment on

ACCJC's upcoming assessment of CCSF, 280 pages in length, and including four volumes of attachments - the evidence. (The "April 30 Complaint) The Complaint, which was also filed on behalf of several individual faculty, union leaders and students, alleged that ACCJC had violated Federal and State law, and its own polices in its 2012 evaluation of CCSF, and resulting decision to sanction CCSF with "Show Cause." (A copy of the entire CFT USDE Complaint and the four volumes of attached evidence is available at www.cft.org - most recently visited on September 17, 2013.)

296. ACCJC's reaction to the filing of the Complaint was immediate - a staff employee threatened to call the police if the three representatives did not immediately leave ACCJC's office. ACCJC also refused to acknowledge receipt of the documents. The CFT/AFT 2121 representatives left a copy of the Complaint and attachments, and peacefully departed, whereupon ACCJC locked its doors and pulled down the blinds. A copy of the entire complaint and attachments may be viewed at www.cft.org (last accessed on September 2, 2013)

297. On May 30, 2013 the ACCJC filed a perfunctory 7 page long Report in Reply to the CFT/AFT 2121 Complaint, which ignored most of its accusations, but did defend itself as to a few.

298. The CFT, *et al*. subsequently filed a second Complaint with the USDE, dated June 4, 2013, alleging that ACCJC had violated another Federal regulation due to its perfunctory and incomplete answer to the AFT 2121/CFT complaint. AFT charged that the ACCJC had violated 34 CFR section 602.23(c), which requires that it respond to complaints by providing a full and complete answer on or before July 8, 2013.

299. The USDE, responding to CFT's June Complaint, directed ACCJC to provide a full and complete response to the CFT's April 30th Complaint by July 8, 2013.

300. In July 2013, the ACCJC acknowledged it filed a further response with the USDE by the deadline, but it refused, and continues to refuse, to serve or provide a copy to CFT, AFT 2121, the other complainants, or the public. The outcome of the April 30 Complaint is discussed below.

ACCJC's Evaluation of CCSF in 2012-2013 and its Decision to Disaccredit CCSF, Made In June and Announced on July 3, 2013, Are Based On and Constitute Unfair and Unlawful Business Practices

301. As described above, the Show Cause sanction caused considerable harm to CCSF, its students and employees, and the public of San Francisco. These adverse effects were much worse than a

lowering of CCSF's bond rating. Attendance immediately suffered, as students abandoned CCSF due to its "Show Cause" sanction and the risk of not remaining accredited. This presented CCSF with the loss of future revenue.

302. According to the State 'P2 apportionment report', CCSF's FTES-specific apportionment revenue is projected at $135.5M for 2013-14. (FTES means full-time equivalent students) This amount followed a drop in FTES enrollment of approximately 11 % from the 2011-2012 school year to the 2012-2013 school year. If an equivalent enrollment drop of 11% continues in spring 2014, an 11% decline would thus amount to an apportionment funding drop of approximately $14.9 Million. There are other funding impacts which followed Show Cause. Additional state funding for the college's various sites is also based on enrollment numbers; further declines in FTEs will result in reductions, currently estimated by CCSF as a probable loss of $1M. Additional funds (approximately $9M) also come to CCSF through non-resident and out-of-state tuition, and these numbers are likewise expected to decline by CCSF.

303. As a result of the disaccreditation decision, City College of San Francisco is expected to suffer a potentially debilitating monetary loss with long-term implications, currently estimated by CCSF administration to be between $22 – $28M annually.

a. Even if the college remains accredited in 2014-2015, new apportionment baseline amounts will be reset based on the 2013-14 loss in FTEs. Unless CCSF is removed from disaccreditation, further enrollment losses for Spring 2014 will invariably result in layoffs of academic employees represented by AFT 2121, layoffs of other employees, curtailment of academic programs, and other cutbacks which the Commission sought to cause by its lobbying and accreditation efforts aimed at narrowing CCSF's stated mission.

304. There was considerable negative publicity in California newspapers, and in other media, as a result of the announcement of Show Cause status.

305. On July 6, 2012, radio station KQED-FM broadcast a show about the accreditation decision, attended by the CCSF Board of Trustees president John Rizzo, CCSF Academic Senate president Karen Saginor and AFT 2121 president ALISA MESSER. A few hours after the show ended, ACCJC issued a press release in which it stated that unnamed "guests" on the program, "in their official

capacity as representatives of CCSF" made incorrect statements about the accreditation review. In its Press Release, ACCJC stated that some of the problems (the "team findings") had been "identified as long as ten years ago." This was a reference to the 8 recommendations made in 2006, discussed above, which were suggestions to improve, not requirements to be met to correct deficiencies.

306. ACCJC had made more than 14 recommendations in its July 2, 2012 Action Letter. Over the subsequent months, CCSF, it Academic Senate, employees, labor organizations, students, and others worked diligently to satisfy Commission requirements. CCSF submitted its Special Report, Show Cause Report, and Closure Report on time. It also filed an Annual Report and a Student Learning Outcomes Report with ACCJC on April 30, 2013.

307. The response to the Show Cause order, CCSF 1) unilaterally imposed pay cuts on the faculty, 2) laid off nearly 30 part-time counselors represented by AFT 2121, many who had worked for CCSF for nearly 20 years; 3) demanded wholesale changes in the college's shared governance system, and (4) demanded that department chairs be cut back and scores of high-priced administrators be hired. These activities were undertaken to satisfy ACCJC, and in some instances, upon information and belief, at the behest of the ACCJC.

The April 2013 "Show Cause" Site Visit Evaluation Team Appointed by ACCJC

308. On an unknown date during the 2012-2013 "academic year", the ACCJC appointed an evaluation team to evaluate CCSF under its Show Cause procedure, as had been explained in the July 2, 2012 Show Cause action letter from Beno.

a. The team appointed by the ACCJC ultimately included 10 members, of whom only one was a faculty member. The team included individuals who had conflicts of interest or the appearance of conflicts of interest which disqualified them from evaluating CCSF.

b. One of the team members was Yulian Ligioso, the Vice President for Finance and Administration at Solano Community College District. Upon information and belief, Ligioso was primarily responsible for the team's evaluation of CCSF's fiscal resources and stability. Ligioso knew, or should have known, of ACCJC's requirement that colleges prefund retiree health benefits according to the ARC, as his college had been sanctioned by ACCJC for failing to do so in or about 2009. Furthermore, Solano had joined the CCLC JPA Retiree Health Benefit trust and made irrevocable deposits into the CCLC JPA trust. Ligioso began working for Solano CCD in or about early 2011, and shortly thereafter became Solano's member (trustee) of the JPA Board of Directors. He served in the position when he participated in the evaluation of CCSF in spring 2013.

c. The evaluation team also included a close confidante and subordinate employee of ACCJC President Barbara Beno. His name is John Nixon. Nixon was a Vice President of the ACCJC since his hiring in or about summer 2011. Previously, Nixon had been a member of the Commission, serving from 2008 until 2011. As alleged above, Nixon had been, since at least 2011, an advisory board member of the Campaign for College Opportunity. Nixon had also been involved in evaluating ACCJC's requirements that colleges prefund the "ARC," when he had been the chair of a four-person ACCJC evaluation team which visited Solano College in February 2009. Nixon also chaired two ACCJC teams which evaluated Solano a second time in 2009 and 2010, over the OPEB issue. Nixon was also the leader of the ACCJC team which evaluated Redwoods in November 2010.

d. ACCJC gave CCSF two-days advance notice of the team visit. The evaluation team visited CCSF on April 4-5, and completed an evaluation report prior to the June 5-7 ACCJC biannual meeting.

e. On April 30, 2013, ACCJC received a copy of the CFT/AFT Complaint and Comment, alleging that participation in the CCLC JPA trust constituted a conflict of interest for any person who was involved as a team member in evaluating CCSF. Despite this actual, apparent or perceived conflict of interest, upon information and belief, ACCJC took no action to recuse Liguoso or Nixon from further participation in the preparation of the team's report, or the assessment of CCSF. And, ACCJC took no action to redo by other team members any portions of the assessment affected by Liguoso and Nixon.

ACCJC's Meetings of June 5 - 7, 2013

309. On June 5-7, 2013, ACCJC held its summer 2013 meeting in Burlingame. The Commission considered CCSF's fate during one or more closed sessions, in which the public was not permitted to attend. ACCJC provided no information as to whether CFT's Third Party Comment, or any other Third Party Comments concerning CCSF were provided to the commission for review. Nor did the Commission provide information as to whether any of the commissioners were recused from

attending or participating in discussion of CCSF's fate, or voting as to CCSF. No information was provided as to any action recommendation made by the visiting team, or any recommendations made by the Commission president or staff.

310. The Commission held a public session on the afternoon of June 7, to which the public was permitted to attend. However, the ACCJC restricted attendance, allowing just about 20 persons out of approximately 100 persons who showed up to enter. The meeting room was "fire-rated" for 150 persons. The ACCJC also expelled individuals who were identified as members of the press, and confiscated cell phones and computers of those permitted to attend, so that they would not record the meeting.

311. At the ACCJC's June 7 meeting, without notice as required by its bylaws, the ACCJC amended its policies when its Commission adopted a new "Statement on the Process for Preserving Confidentiality of Documents Related to Institutional Effectiveness."

a. The new Confidentiality Statement explicitly defined all documents the Commission issued or received in regard to ACCJC evaluations for accreditation, to be considered confidential. The new Statement included drafts, personal notes, and emails as among those items defined as confidential. The Statement also required all members of on-site evaluation teams to shred or return to President Beno, all documents they had obtained or prepared from their evaluative activities and site visits, including the aforesaid personal notes.

b. The new statement said that "all documents pertaining to an institution" should be considered as "highly confidential, unless the documents are explicitly identified in writing to the contrary." Presumably this definition encompassed the schedule of the visiting team visits, which had been relied upon in the Local 2121/CFT Complaint to demonstrate the critical role performed by President Beno's husband, Peter Crabtree, in the March 2012 evaluation team visit to CCSF. All ACCJC documents related to institutions' accreditation are public documents under the California Public Records Act, when they are written or received by a California community college, unless there is an applicable exception to that public status expressly stated in the Public Records Act. There is no such exception that is generally applicable to or explicitly related to documents given to or received by public entities in the accreditation process.

c. At the same Commission meeting, the ACCJC revised its "Policy on Professional and Ethical Responsibilities of Commission Members," to provide that any commissioner who receives an "inquiry" concerning a request for information concerning ACCJC business or accreditation practices, should refer the inquiry or request to the ACCJC President or the president of the Commission, "who serve as the official spokespersons for the ACCJC."

d. And, the Commission amended the same policy to require that commissioners not just "accept and subscribe" to the purposes of accreditation, but henceforth "accept and subscribe" to the "purposes, policies and processes" of the ACCJC.

e. These new policies were intended to restrict disclosure, public knowledge, and public discussion of the role, activities and responsibilities of the ACCJC.

f. The timing of this action, its adoption in violation of ACCJC's procedures which require two votes over two ACCJC meetings, and the broad scope indicates this action was taken to prevent revelation to the public of information that might implicate ACCJC in violations of its own policies, State law, or Federal regulations.

312. The only public record of ACCJC's decision that day to disaccredit CCSF is reflected in a July 3, 2013 Action Letter from President Beno to CCSF, and the report of the visiting team prepared before the ACCJC's June meeting. In the July 3, 2013 letter, and in the Show Cause team report, the ACCJC indicates that as to several standards, the Team or ACCJC was unable to determine that ACCJC met the Standards or Requirements, and for this reason, ACCJC disaccredited CCSF. In several cases the team and the action letter indicate that there was insufficient time to determine if CCSF now met ACCJC standards and requirements. The time frame to which ACCJC referred was the time frame established by ACCJC in its July 2, 2012 action letter.

313. In deciding to disaccredit CCSF, the Commission placed the burden of proof on the CCSF and made its decision to disaccredit CCSF because it found that CCSF had not met its burden of proving that it had resolved the "deficiencies" that led to the 2012 Show Cause sanction. It was unlawful, unfair, and in violation of the ACCJC's own policies to thus place the burden of proof on the CCSF, because there had not been a valid show cause order that could have caused the burden of proof to be so allocated.

314. The July 3, 2013 letter announced that CCSF was disaccredited effective July 31, 2014.

AFT 2121 and CFT File Amendment to the April 30th Complaint on July 1, 2013 over June ACCJC Actions to Require Shredding of Accreditation Documents, and New Policies to Prevent Commissioners and Others From Making Public or Other Statements About ACCJC

315. On July 1, 2013, the AFT 2121 and CFT filed an amended complaint with the USDE and ACCJC, alleging, *inter alia*, that ACCJC had taken actions at its meeting on June 5-7, which violated Federal regulations, and common law fair procedure. Among other things this amended complaint alleged that ACCJC had (1) not acted appropriately in threatening to call the police when these Plaintiffs attempted to file the April 30, 2013 complaint with ACCJC; (2) violated 34 CFR section 602.15(which requires the Commission retain all documents including correspondence "that is significantly related" to Commission decisions) and ACCJC's own bylaws, by adopting the ACCJC's Statement on shredding documents at its June 7, 2013 meeting; and (3) adopted new rules in the policy which prevents anyone associated with the Commission except its president and Board chair, from "commenting publicly" about ACCJC business, member institutions, and accreditation practices. The new policy also forbade any commissioners serving as "faculty representatives" or "administrative representatives," from discussing accreditation practices with those they are designated to serve as representatives.

316. ACCJC's new shredding policy was adopted in violation of ACCJC's policies and bylaws. Institutional policies must go through a process of distribution to CEOs and the public, a *first and second reading in public session*, and an opportunity for institutional and public comment, before being voted on in public. ACCJC violated these requirements. There was no first and second reading, and upon information and belief, no advance distribution of the policy language. ACCJC "justified" this by mischaracterizing the policy as being an "internal" Commission operational policy rather than an institutional policy, According to Article III, Section 5 of its Bylaws, the Commission adopts "operational" policies "that deal with the *internal operation of the Commission and its staff*." Adoption of such operational policies "may take place at any Commission meeting, in open or closed session, and do not require two readings." *Id*. The new policy is not an operational policy. First, it concerns the evaluations of *institutions*. The decision to shred evidence of prior evaluations affects the availability of information relevant to complaints against the Commission. Second, the new directive extends to former evaluation team members. Third, the new policy is an extension of the Commission's operational

"Policy on Public Disclosure and Confidentiality in the Accreditation Process."

317. On or about July 16, 2013, the ACCJC, in a letter from ACCJC Vice President Krista Johns to CFT President Joshua Pechthalt, rejected the AFT 2121/CFT amended complaint as "untimely," on grounds it had to have been filed on or before May 30, 2013, notwithstanding that it complained about events arising on June 5-7, 2013.

318. On or about July 22, 2013, the USDE, by Kay Gilcher, Director of the Accreditation Division, emailed CCSF faculty employee Wendy Kaufmann, in regard to a complaint Kaufmann had filed against the ACCJC. In her email Gilcher wrote that, "Please note that our complaint process is not a judicial one, nor does it result in the Department making a judgment as to whether an agency should or should not be accrediting or continuing to accredit a given institution." She added, "... be advised that our purview with respect to accrediting agencies is limited to our recognition authority and that, absent recognized accreditation, institutions cannot establish or continue to retain eligibility to participate in the federal student aid programs."

319. On July 23, 2013, Gilcher emailed counsel for AFT 2121/CFT Robert Bezemek, and advised that it was not ACCJC policy to augment a complaint under review with an amendment, but that the amendment would be considered when ACCJC's petition for re-recognition was considered. On July 29, 2013, AFT 2121/CFT resubmitted their earlier Amendment to USDE as a stand-alone Complaint.

ACCJC's Announcement of CCSF's Disaccreditation

320. ACCJC's July 3, 2013 action letter offers several reasons for CCSF's disaccreditation:

a) Beno wrote that ACCJC terminated CCSF after a one-year period in which CCSF was required to demonstrate it had adequately addressed the deficiencies outlined in its July 2, 2012 letter. However, the ACCJC had actually given CCSF less than a year (9 and ½ months) to demonstrate its compliance.

b) The Commission determined CCSF was still "significantly out of compliance with" four Eligibility Requirements and elements of all four Standards. The Commission had (i) reviewed some of the elements CCSF had been found in compliance with in 2012 and now found they were not in compliance with them; and, (ii) found CCSF out of compliance with 11 elements that the visiting team determined in April 2013, it complied with. And, (iii) the Commission continued to rely on ACCJC's failure to correct deficiencies supposedly existing in 2006 - even though ACCJC had not identified deficiencies in 2006, or at any time until its July 2, 2012 action letter.

c) As to the elements which CCSF had satisfied in 2012, but which ACCJC nonetheless reviewed anew in 2013, ACCJC found CCSF was out of compliance with 11 elements that the visiting team determined in 2012 that it complied with. For ACCJC to review elements found satisfied earlier contradicts ACCJC's treatment of other colleges who have been placed on Show Cause review.

d) Of the portion of the July 3, 2013 action letter which discussed deficiencies, about half was devoted to finding that CCSF's leadership and governance was unsatisfactory because of "acrimony" and "differences of opinion" among the public, students, faculty, and labor organizations. The report avoided mentioning that this difference of opinion involved issues of public concern, including disputes over actions of ACCJC, the State trustee, and the interim Chancellor, including differences of opinion about CCSF's mission.

e) The Commission concluded that CCSF had insufficient time to achieve the demands made by the ACCJC, a dilemma of the Commission's own creation.

f) The Commission decided that CCSF had still not addressed, and "appears to lack the capacity to address" many financial management deficiencies identified in the 2012 Evaluation Report, and referred to several matters which ACCJC could not lawfully assess such as OPEB prefunding, the extent of the CCSF reserve, its use of grant funds, the percentage of budget spent on employee compensation, and the free speech activities of individual members of the public, faculty, students, and the trustees.

321. ACCJC had only once before disaccredited a California community college. That college was Compton, which had been disaccredited in 2006. Compton, a relatively small, 12,000 student college, was but one of many California community colleges located in Los Angeles County. Compton had been sanctioned numerous times before it was disaccredited, and had been given several years to satisfy ACCJC standards.

322. ACCJC ordered CCSF disaccredited, and hence effectively shut down, as of July 31, 2014.

323. On July 3, 2013, following receipt of ACCJC's disaccreditation order, Brice Harris, the

Chancellor of the California Community Colleges issued a statement about the disaccreditation in which he announced he would appoint a "special trustee" to run City College and change the college's governance structure. At 5:30 p.m. that evening, Beno emailed State Chancellor Brice Harris, stating that she was watching the "various news accounts" of ACCJC's decision, congratulating him on a "Beautiful job" in his press conference, and adding "the college may survive, with the right leadership." (Email, Beno to Brice, July 3, 2013)

USDE Determination of August 13, 2013

324. Mid-day on August 13, 2013, the USDE's response letter to April 30 Complaint was received by CFT counsel and ACCJC. The letter disclosed that USDE sustained four aspects of the AFT 2121/CFT Complaint of April 30, 2013, and deferred ruling on the remaining allegations. (Exhibit 1) As to these other issues USDE explained, "To the extent issues identified by the staff from the complaints have not been discussed above...as the agency has submitted a petition for recognition to the Department, a complete review of all sections of the Secretary's Criteria for Recognition will be conducted in that context..." (USDE letter to Barbara Beno, August 13, 2013, p. 5)

325. As to the aspect of the April 30th Complaint, dealing with the recharacterization of the CCSF's re-accreditation in 2006 and the subsequent events, the USDE concluded that the ACCJC was out of compliance with the cited Federal regulations (in particular 34 CFR sec. 602.18(e)), for failing to clearly identify whether deficiencies had been identified. The USDE noted that ACCJC's failure to clearly identify whether a recommendation indicated a deficiency indicated noncompliance with Federal standards which "impacts the agency's ability to provide institutions with adequate due process." (See Exhibit 1) Had there been noted deficiencies, ACCJC should have afforded CCSF notice and up to two years to rectify them, and that it had not done so.

326. As to placing Peter Crabtree, Beno's husband, on the CCSF evaluation team, the USDE found it constituted at least the appearance of a conflict of interest in violation of Federal requirements.

327. As to the composition of the CCSF evaluation team, the letter found it did not comply with Federal requirements because it had insufficient numbers of teachers.

328. Finally, the letter found that had CCSF intended to find deficiencies at CCSF in its 2006 review, it had failed to clearly make such a finding, because its use of the term "recommendations" was

ambiguous - it used the term to both indicate deficiencies and indicate suggestions for improvement. Since the USDE ruled, Plaintiff CFT has obtained additional evidence which corroborates its April 30th Complaint and which had not been presented to the USDE. This subsequently discovered evidence confirms that in 2006, when ACCJC letters placed colleges on sanction, they used the term "deficiency" to precede their recommendations, confirming that in such cases the recommendations were to improve deficiencies. (See discussion of "Feather River Community College," para. 92, *supra*.)

329. At 3:00 p.m. on August 13, the ACCJC issued a press release in which it asserted that the requirement for evaluation teams fairly representative of the faculty was a "new" requirement, and it mischaracterized the letter as saying ACCJC should have sanctioned CCSF in 2006. The press release is posted at www.accjc.org (Last acccessed on Sept. 19, 2013) Upon information and belief, the response of the ACCJC was not submitted to nor approved by the Commission itself, but is another example of the broad authority which reposes in the President, Barbara Beno.

330. The USDE, in the August 13 letter, ordered the ACCJC to take immediate steps to correct the areas of non-compliance identified by the Department. (Exhibit 1, p. 5)

331. The USDE has no authority to enforce its decisions except to sanction or deny further accreditation to an accreditor. The USDE also has no authority to require an accreditor to reverse a wrongful decision for Show Cause or Disaccreditation. USDE spokesperson Jane Glickman stated on August 14 that "The Department does not have authority to reverse any decision made by an accrediting agency." (See, e.g., Charla Bear and Jon Brooks, *Dept. of Education Ruling Won't Solve CCSF Accreditation Woes* (August 14, 2013), available at: http://blogs.kqed.org/newsfix/2013/08/13/106731/city-college-ccsf-accreditation (last accessed September 14, 2013)). Glickman is quoted as saying, "The Department's letter does not affect the [disaccreditation] decision directly; however, CCSF can and likely will appeal the ACCJC decision, and the Department's letter could become part of their appeal." ACCJC posted this article on its website. This limitation on the USDE's authority is discussed further below. CCSF, now controlled by State Trustee Robert Agrella and the State Chancellor, did not include the USDE's determination or letter in its appeal, also discussed below.

332. On August 14, 2013, CFT and Local 2121 demanded that ACCJC rescind Show Cause

and Disaccreditation, in view of the USDE findings that the team which evaluated CCSF in 2012 was unlawfully constituted, due to the presence of President Beno's husband and insufficient faculty participation; that the 2013 team was also lacking in faculty representation; and that the ACCJC was wrongfully treating the 2006 accreditation as having revealed deficiencies. The USDE letter was written such that its findings plainly applied to the 2013 evaluation team which ACCJC had constituted in violation of USDE regulations.

333. On August 14, ACCJC representatives met with Robert Agrella, CCSF's trustee, and Scott-Skillman, Interim Chancellor, and discussed the USDE ruling dated August 13. According to subsequent public statements by Agrella, ACCJC informed CCSF that the USDE decision had no effect on CCSF's disaccreditation. The Commission itself did not publicly announce whether it had taken a vote as to this determination, or whom within the Commission made this decision. Presumably they did not, since they meet only biannually, and this determination was made by ACCJC President Barbara Beno.

334. ACCJC representatives refused to rescind its disaccreditation decision.

335. At a State Legislative Hearing on August 21, 2013, ACCJC Vice President Krista Johns and Commissioner Frank Gornick stated that the USDE determination was "minor" and "preliminary," and indicated it had no effect on CCSF's disaccreditation. In Gornick's written testimony, submitted to the committee and posted on www.acccjc.org, Gornick states that the letter represented "preliminary findings," and "three small areas of concern." It mischaracterized USDE's non-decision on other aspects of the April 30 complaint as an endorsement of ACCJC's policies and practices. Gornick defended ACCJC's disaccreditation of CCSF as being necessary to "serve students," and to maintain quality and promote improvement in the California community colleges.

336. ACCJC's continued recognition as a reliable accreditor by the Secretary is under review by the USDE, on ACCJC's petition for continued recognition. Third Party comments as to its continued recognition were filed by numerous groups and individuals on or before September 6, 2013. Under USDE procedure, the ACCJC will be afforded an opportunity to respond, the USDE Staff will conduct an analysis and make a recommendation, and in December 2013, the National Advisory Committee on Institutional Quality and Integrity (NACIQI) will hold a hearing in Washington D.C. or thereabouts, at

which it will accept further oral comment and publicly discuss and then make a recommendation to the Secretary of Education on ACCJC's application for re-accreditation by the Secretary. A decision by the Secretary is expected in early 2014.

337. USDE staff made public statements following its August 13 decision, confirming that the USDE lacks any authority to reverse ACCJC's sanctions of CCSF. They further indicated that letters such as that issued by USDE may be included in a college's appeal of disaccreditation. However, as alleged below, the State trustee, State Chancellor's Office, and CCSF have stated they will not include the USDE's ruling or the CFT's Complaint in their "review request" or "appeal" of disaccreditation as they do not want to be viewed by ACCJC as going "against the Commission." Agrella stated, "We discussed the recent Department of Education letter and learned that the letter does not change the College's [disaccredited] status and the Commission's findings. The Commission also informed us that the review and appeals process is a confidential matter."

The Takeover of CCSF By the State Chancellor

338. On or about August 19, 2013, the Board of Governors of the California Community Colleges adopted an emergency regulation, expanding the scope of its authority to take over a community college district due to threats to its accreditation. The City Attorney of San Francisco has filed a Petition with the Board of Governors asserting that the Board of Governors have improperly delegated authority over CCSF to the ACCJC.

339. On or about July 8, 2013 the State Chancellor and the Board of Governors took control of CCSF and displaced its elected board of trustees (the Governing Board). Robert Agrella, who had been serving as an "advisory trustee" pursuant to a decision of the District's Governing Board, was appointed as the State's "permanent" Trustee on July 8, 2013, with total control of CCSF. Among other things, Agrella acted to end meetings of the college's elected Governing Board.

CCSF Request for Review

340. On July 30, 2013, ACCJC filed a timely, "request for review" of the disaccreditation decision with the ACCJC. Such a request does not require any indication of the reasons for seeking review of disaccreditation, and the request did not provide any. ACCJC policy then afforded CCSF a period of time to submit its reasons for seeking review, and any supporting evidence. Then, if ACCJC's

president decides it raises matters which permit further review, then the President appoints a "review panel" to consider the Request.

341. On or about August 21, 2013, CCSF filed its Statement of Reasons in support of its Request for Review, and presumably supporting evidence. Prior to filing its Statement, CFT and AFT 2121 requested, on or about August 15, 2013, that CCSF confer with CFT over the reasons to be advanced and asked CCSF to be sure to include the recent ruling of the USDE as grounds for ACCJC to reverse its Show Cause and Disaccreditation decisions. CCSF refused to discuss the nature of its planned Request and refused to rely upon the USDE ruling. Although Trustee Agrella and State Chancellor Brice Harris (who served two terms on the Commission and previously served as Chancellor of the Los Rios Community College District) stated on August 14, 2013 that the Statement would be publicly distributed, they later stated that the College's request would not be publicly distributed because ACCJC said it was "confidential."

342. On August 19 Mr. Agrella sent an email to the college community, which stated, *inter alia*:

> "I also want to inform the college community that for several reasons **I have chosen not to use the DOE letter in our request for review. As previously stated, we cannot share the review documents because we have been clearly informed by the Commission that all parts of the appeal process, including the review, are to be treated as confidential**.
>
> . . . . First and foremost is that the AFT 2121 complaint and the DOE's letter are not representations of CCSF but rather deemed by the Commission and the college to be third party communications. If we were to use these arguments they would become the college's official position and **therefore the college would join in the attack on the Commission.** I strongly believe that the best path to maintaining CCSF's accreditation is to follow the Commission's rules, regulations, and directions and to continue to show substantial progress toward meeting the eligibility requirements and standards. If our review document joins the attack on the Commission, I believe that the review and appeals process will be unsuccessful. If this is the case, I also believe our timeframe for meeting the standards may be significantly shortened" (emphasis added)

343. Subsequently, in August 2013, CFT and AFT 2121 submitted requests under the California Public Records Act to CCSF and the State Chancellor's Office for copies of the CCSF Statement of Reasons for seeking review, that had been filed with the ACCJC. The trustee and CCSF have declared that ACCJC effectively determines what documents the State or CCSF may turn over to the public under the California Public Records Act (Cal. Gov't. Code § 6250 *et seq*., or "CPRA")

a. During an August 20, 2013 press briefing with Robert Agrella hosted by New

American Media on "The Future of City College," Agrella stated,

> "With respect to the Public Records Act, of course the correction, or the solution to the Public Records Act...when you receive one, is you, if it's true that it is a public record, then the solution to it is of course the release of the documents. It's probably not going to be us that's going to make that determination. It would be the Commission that would make that determination on the Public Records Act." (Agrella, New American Media, August 20, 2013, 43:12 minute mark)

b. On August 15, 2013, Gohar Momjian, the CCSF's "Accreditation Liaison Officer" and one authorized to speak about accreditation for CCSF, stated that:

> "The Commission also informed us that the review and appeals process is a confidential matter and thus we will not be publishing drafts or documents online as we initially stated as we undergo this process. It is very important that we respect the Commission's procedures in the review process. (Emal, Momjian to CCSF community)

c. In demanding that colleges keep such materials confidential, the ACCJC is deliberately flouting Government Code section 6253.3, which deals with "Disclosure of information; control." It states that:

> "A state or local agency may <u>not</u> allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter." (Emphasis added.)

344. On September 13, 2013, a lawyer representing CCSF wrote Local 2121/AFT counsel and others that the statement of reasons would not be released because ACCJC indicated it was confidential, and that under the CPRA it may withhold the document from the public.

345. The above acts, among others, indicate that only the PLAINTIFFs are able to vindicate the rights of the students and employees of CCSF, and the public of San Francisco, to the continued operation of CCSF, and to assure that ACCJC's unfair and unlawful orders are reversed.

Because the Commission Determined, in June 2013, That CCSF Had 11 Deficiencies More Than the 19 Deficiencies Found by the Visiting Team, the Commission Was Required by its Policy to Provide Written Notice to CCSF of the 11 New Deficiencies, Afford the College the Opportunity for a Written Reply, and Defer Ruling on CCSF's Accreditation Until January 2014. The Commission Failed to Perform These Functions, Meaning That Its Disaccreditation of CCSF was Unlawful and Unfair

346. ACCJC was without jurisdiction to disaccredit CCSF at its June 2013 meeting. Its action to do so, announced July 3, 2013, violated the ACCJC Policy on "Policy on Good Relations With Member Institutions"), Federal regulations (34 CFR § 602.25(c) and (d)), and California common law fair procedure. It also violated the requirements of ACCJC policy, Federal regulations, and California's

common law of fair procedure, described above, that the Commission provide clear, written specifications of any deficiencies. A listing of deficiencies by Standard number does not provide the requisite particularization.

347. Federal law requires that ACCJC provide detailed reports which clearly identify and include written specification of any deficiencies. (34 CFR § 602.18(e), 34 CFR § 602.25(c) (due process). Beno's July 3, 2013 disaccreditation decision violates these regulations because ACCJC does not clearly identify these 11 "deficiencies." The USDE Guidelines also emphasize, at p. 77, that written procedures of an agency must provide "written specifications" of any deficiencies. ACCJC's procedures do not call for such specifications.

348. The ACCJC's four general Standards include 42 elements. The CCSF Show Cause evaluation team found CCSF satisfied *23 of the 42 elements of these four Standards*, and partially satisfied the remainder. Among these 23 the team found to be satisfied were the 11 elements described below. However, the Commission reversed the Team, concluding that 11 of these 23 elements were not satisfied. It did so without providing CCSF with the due process rights afforded by its policy and required by Federal regulations, including 34 CFR sections 602.25(c) and (d).

349. The 11 elements in which the Commission "overruled" the team include these:

a. Standard I, which covers "Institutional Mission and Effectiveness," has 11 "elements." The team found that CCSF satisfied 10 of the 11 elements. Standard IA, addressing "Mission," has 4 elements. The team found that CCSF met all four, including I.A.3. However, ACCJC's July 3, 2013 "action letter" states: "the **Commission determined** that City College of San Francisco does not yet meet Standards I.A.3..." The Commission offered no explanation for changing I.A.3 from "satisfied" as found by the team, to "not satisfied" as found by the Commission.

b. Standard I.B., covering "Improving Institutional Effectiveness" has 7 elements. The Show Cause team found that CCSF met 6 of the 7 elements: I.B.1,2,3,5, 6 and 7; as to I.B.4, the team found that it did not meet that element (I.B.4 covers the breadth of the college's "planning process" which "allocates necessary resources and leads to improvement of institutional effectiveness." The Commission overruled the team, finding that CCSF did not meet elements these additional three elements: I.B.1, I.B.2., and I.B.3. I.B.1. covers the "maintenance" of "an ongoing, collegial, self-reflective dialogue about the continuous improvement of student learning and institutional processes." I.B.2. deals with "institutional goals" and their "articulation." I.B.3. essentially deals with how a college confirms that it is meeting its goals. The Commission gave no explanation as to why it changed satisfactory to unsatisfactory. Hence, while the Team found CCSF met 10 of 11 elements in Standard I, the Commission, without notice or explanation, concluded CCSF met only 6 of 11 elements.

c. The Commission changed an additional 7 elements from"met" by the Team, to "not met", all without explanation, just by listing the numerical and letter designation of the element at the bottom of page two of its July 13, 2013 letter. These changes thus concluded that CCSF was more deficient in meeting the Standards than found by the visiting team.

350. The Commission's Policy on "Good Practice in Relations With Member Institutions" provides that <u>before</u> the Commission takes action to list any deficiency which was not noted in the External Evaluation Report, and before it relies upon on such a deficiency for a sanction or termination of accreditation, it will "through its President" "afford the institution additional time to respond in writing to the perceived deficiency before finalizing its action at the next Commission meeting." (Policy, *2013 ed.*., at Section 21.b.) The 2013 version, which was in effect when the Commission acted to disaccredit CCSF, and in all material aspects was in effect for the since 2011, states:

> "If the Commission's action lists any deficiency, which was not noted in the External Evaluation Report, before making any decision that includes a sanction, denying or terminating accreditation, or candidacy, the Commission, through its President will afford the institution additional time to respond in writing to the perceived deficiency before finalizing its action at the next Commission meeting. The institution may address any asserted procedural errors as well." (Emphasis added)

351. Although Beno's July 3, 2013 listed in a footnote, another 11 deficiencies that were not noted in the external report, the Commission did not afford CCSF, in writing, an explanation for why the "sanctions" had been increased. Nor did it afford CCSF the required additional time to respond, and instead of waiting until the next Commission's next meeting to act - as ACCJC policy specifies - the ACCJC finalized its action on June 5 or 6. In other words, the President and the Commission disregarded explicit due process requirements in order to disaccredit CCSF.

352. For the above reasons, the Commission acted in violation of its policies, unfairly and unlawfully, to disaccredit CCSF. The Commission's unfair and unlawful business practices prejudiced CCSF because number of deficiencies plays a part in whether a college is sanctioned, or the level of

sanctions.

ACCJC Inconsistently and Unfairly Used the Show Cause Review to Evaluate Anew Standards the College Met in 2012, But This Time ACCJC Said They Were Deficiencies

353. ACCJC re-visited several Standards elements which it had found ACCJC satisfied in 2012. But in 2013, it found they were not satisfied.

354. One example has to do with Standard II.C. - Library and Learning Support Services. The team which visited CCSF in 2012 found no deficiency associated with Standard II.C. To the contrary, it commended the library staff, concluding that the college met the standard, and had made "consistent improvement in addressing each element of Standard II.C. since the 2006 self study .." The library was praised as a "campus leader in publicizing and improving student learning outcomes." (2006 Evaluation Team Report, pp. 42-44)

355. Even though the Library was better than satisfactory in 2006, ACCJC reviewed it anew in 2013. This action is inconsistent with ACCJC's typical practice for a college on Show Cause - it does not go back and revisit standards which were met. When ACCJC uncharacteristically and inconsistently reviewed the Library a year later, this time it was deficient. In order to rate the library as sub-standard in 2013, the Show Cause team engaged in an arbitrary and unreasonable analysis, lending more support to the conclusion that ACCJC did not engage in an impartial assessment, but was retaliating against CCSF over its opposition to the Student Success ideas of ACCJC, and had objected to ACCJC's activities and evaluation in 2012.

356. The 2013 team acknowledged the library as being excellent. But by 2013 the library's "book collection" was "problematic" because of its "age." The passage of just one year had somehow pushed it over the edge from meeting the Standard, to being deficient. Then the team criticized the new library organizational structure - yet the new organization structure resulted from the college-wide criticisms of ACCJC's 2012 team. Then, the team found that "budget constraints continue to hinder" Library services, even though "library hours increased slightly over ... 2012." The team incongruously found "compelling evidence of quality service in an atmosphere of diminishing resource," in 2013, which is extremely positive. In abruptly declaring the Standard was not met, the team mentioned another positive, that the Library staff "are maximizing services of students with limited resources."

And, then yet the team claimed the Library needed to "increase Library staff," upgrade the "aging book collection," improve the Media Services "staffing level," and hire "additional programming staff." These assertions it should hire more staff contradicts ACCJC's complaint in 2012 and 2013 that CCSF spent too much of its budget on employees. There was a criticism that in creating a new Library administrative structure, some faculty felt they were not consulted. Yet it was this sort of fast, top-down restructuring of the college's administration which ACCJC had demanded in 2012. The finding of a deficiency was the product of an inconsistent analysis, lacking in credibility.

357. ACCJC unfairly reviewed four Standards in 2013 that CCSF had satisfied in 2012: Standards I.B.3, II.C.1, II.C.2 and III.B.1.

ACCJC's Disaccreditation of CCSF For "Leadership" and "Governance" Deficiencies - Punishing the College and its Students For the Free Speech Activities of Trustees, Labor Unions, and Individuals

358. Standard IV of the ACCJC's four Standards, is "Leadership and Governance." This 3 and 1/2 page long standard includes these "basic" principles: 1. Governance should be *effective.* 2. Through established governance structures and a written policy, the board, administrators, faculty, staff and students *work together* to govern. 3. The roles and responsibility of various participants are clear. 4. The Board "acts as a whole." ACCJC's interpretation and application of this Standard is unfair and unlawful.

359. Standard IV has been the second-most frequently cited reason for sanctioning community colleges according to the ACCJC's "Five-Year Trend" analysis of "Colleges on Sanction January 2009 - January 2013." This reason has applied to 65% of the 81 sanctioned colleges.

360. Deficiencies in satisfying Standard IV were one of the primary reasons ACCJC placed CCSF on Show Cause, and Disaccredited CCSF.

361. ACCJC unlawfully and unfairly placed CCSF on Show Cause, and Disaccredited it, because, among other things, its trustees, employees, students, labor unions that represented its employees, and individuals within these "groups" had publicly disagreed with each other on some issues, or were critical of the Commission's unlawful and unfair practices. ACCJC took action to sanction and then disaccredit the CCSF, even though in most, if not all, cases the "offending" comments were made by individuals as opposed to the school board, union or academic senate as an entity.

362. In ACCJC's 2012 accreditation review, CCSF was determined to only partially meet Standard IV, Governance, because of Standard IV.B., "Board and Administrative Organization." The Board was found deficient because, "individual board members contacted the press regarding board and college issues prior to consulting with the chancellor [and] ... individual board members pursuing personal agendas to advance personal interests. These behaviors raise questions about the governing board's bias and independence. (IV.B .1.a)" (Team Evaluation Report, p. 63) The Report did not identify the offending individual board members.

363. In 2013 this Standard again played a huge role in ACCJC's disaccreditation. The ACCJC's July 3, 2013 action letter is focused more on deficiencies regarding Standard IV than any other Standard. Nearly all of page 3 and 4 of the letter criticizes the College over the comments or actions of individuals.

a) The Action Letter treats individual or collective dissent and protest as "institutional deficiencies in th area of Leadership and Governance" which it is claimed have "inhibited the institution's ability to move effectively and with appropriate speed to resolve its problems." The letter asserts:

* "**active protests against the direction the college is taking**, **expressed at governing board meetings, and against the college leadership**, indicate that not all constituencies are ready to follow college leadership to make needed changes in a timely manner." (Beno letter, p. 4, emphasis added)

* "**significant divisions in the faculty** ... prevent the institution from responding effectively to the requirements of accreditation." (Beno letter, p. 3, emphasis added)

* "While some groups work to make needed changes, **others militate against change**." (*Id.*, emphasis added)

* "The **acrimony is evident in behaviors at governing board meetings**." *Id.*

b. In finding CCSF deficient for the foregoing reasons, ACCJC does not supply specifications of these deficiencies, nor even identify the issues which have inspired "active protests," "significant divisions," individuals militating "against change," and "acrimony." These comments in the Action Letter were made in regard to matters of public concern, by individuals concerned about the College, and generally in public forums designed for such expression.

c) ACCJC does not identify the individuals, or groups or entities, responsible for these comments, and rather than stating what was said, offers opinions and characterization of the comments.

d) Some of the alleged "acrimony" seemingly results from the ACCJC being viewed as interfering in the collective bargaining relationship between CCSF and its labor unions, and demanding reduction in employee compensation and working conditions, changes which are considered to be outside of ACCJC's purview. In addition, college employees and organizations publicly disagreed with the the college leadership for various restrictions on speech or attendance by the public at board meetings, such as reducing the time given to speakers to address the Board (before it was removed) or requiring attendees to sit in an "overflow" room, and other controversial Board or District activities involving matters of public concern.

364. ACCJC's interpretation and application of Standard IV as to community colleges in general, includes the following:

a) ACCJC interprets its criteria that college trustees "act as a whole" to mean that trustees must speak as a whole, with a single voice.

i. When President Barbara Beno addressed the CCLC "Effective Trusteeship Workshop" in Sacramento, CA on January 26, 2013 she stated that once a board acts, the board members must **"support" the action publicly**, or "**risk an accreditation ding**." She added that if the Board votes one way, and a trustee disagrees, "**you have to give up** that fight; maybe this board ... is not the right place for you." Beno said that 'if a trustee is on the losing side of a vote once the vote occurs, the trustee must '*publicly support*' the vote.' As she put it:

> "... if the board is making a bad decision, you have to give up that fight – maybe this institution is not the right place for you ... don't go to the press. It' not a great idea to talk to the press. **If a trustee is on the losing side of a vote, once the vote is made, [the trustee] must publicly support the vote. Teamwork is essential.**"(*Id.*)

Ms. Beno ascribed this to the need for "harmony." When asked what a trustee should do if s/he believed a decision was illegal, Beno said one should "call the FBI."

ii. Many instances of ACCJC's obsession with trustees speaking as one are set forth in detail in the LOCAL 2121/CFT Complaint of April 30, 2013. Among the noteworthy examples is this one. For several years, 1 or 2 Peralta trustees and the Chancellor jointly held "Board" or "campus listening sessions," at which students, faculty, members of the public were encouraged to meet them to discuss any problems they had. Topics varied, but occasionally included health and safety concerns, student learning outcomes, construction, progress on accreditation reports, master planning, and various student programs. The sessions were advertised and possible topics included, and took place at each of

Peralta's four colleges, including Berkeley City College, where Beno was previously president.

After an April 2010 ACCJC Special Visit, a 5-person team led by Commissioner Frank Gornick, informed the District that "while they served the purpose of connecting district trustees and administration with the colleges, they are not a systematic way of monitoring institutional effectiveness" and interfered in administration, and had to be discontinued. Ding. They were stopped. (See Beno to Chancellor Elihu Harris, June 30, 2010, and attached Special Visit Report, Peralta Community College District, April 19, 2010, pp. 15-16.)

iii. Ventura, Moorpark, and Oxnard Colleges were placed on Probation by the ACCJC at its meeting of January 10-12, 2012. The Commission was primarily upset with 12 year veteran Board of Trustee member Arturo Hernandez who the Commission described as "disruptive" and displayed "inappropriate behavior." Trustee Hernandez responded to these accusations in a July 10, 2012 Memorandum to the Faculty Senates, AFT, SEIU, Student Associations and other stakeholders of his District. He first noted the precipitous and flimsy nature of the "accreditation violations" cited in the report,

> "Now that the ACCJC report has been presented to the public and the inaccurate and libelous accusations against me have appeared in the press, I believe that I have been defamed by false accusations and that it is now time to respond**... I was not interviewed by the Accreditation Team regarding the comments and perceptions that were presented to them**... Previous to the April 2012 report... **I was never provided a single written item, written advisory, email, memorandum, or other forms of documentation or evidence advising me of anything resembling the noted concerns**." [Emphasis added.]

Next Trustee Hernandez addressed the situation he believed the Evaluation Team was referring to when it found that he was "disruptive and "inappropriate."

> "It is public knowledge that during the recent round of cuts for the colleges, I publicly **requested at Board meetings that the college administration share with the Board the analysis used to validate the proposed elimination of certain instructional programs at one of the colleges**... I was... informed by one college administrator... that selection of the programs for elimination was based on the perception that 'cutting those programs would draw the least flak from the community.' Based on this feedback, **the decision was seemingly arbitrary and guided by what would avert repercussions rather than what was good for students and the college district.**.. I take my vote on behalf of all communities very seriously. When we are impacting our student's future or our employees positions, **it is my duty and responsibility to gain clarification before voting** on the abolishment of programs, jobs or other services... In effect, my opposition as a Board member to eliminating instructional programs without a valid analysis to back up that decision was apparently viewed as inappropriate conduct... **I believe as an elected Trustee that it is my fiduciary duty to seek clarification and logical answers**." (Emphasis Added.)

Trustee Hernandez was trying to be accountable to the people that elected him. He tried to procure simple information about the methodology behind selecting certain classes for elimination in order to ensure that the students of his District were being best served. This type of action– requesting simple follow-up information from Administration-- is what voters hope for from their elective representatives. Yet this type of action is forbidden and sanctioned as a deficiency by the ACCJC. Ultimately, Trustee Hernandez's concerns were shared by other members of the Board, and the staff recommendations were not approved. And ACCJC gave the college a "ding."

b) When newly-elected CCSF trustee Rafael Mandelman merely expressed, in a single column in the San Francisco *Chronicle*, published in March 2013 that he was impressed with the "improvements" at CCSF and optimistic the college would remain open, visiting team members, primarily ACCJC Vice President Nixon, questioned him and his board colleagues about his column and indicated he should not be offering his individual opinion in the newspaper.

c. ACCJC is hyper-sensitive to criticism of its activities by individual's who are part of the "college community." After LOCAL 2121 president Alisa Messer, a member of the public, a District trustee, and a District Senate representative made comments about CCSF and ACCJC's actions at a public radio broadcast on July 5, 2012, the Commission issued a Press Release less than 6 hours later, condemning the College for the comments as being inaccurate or misleading, and publicized the Show Cause sanction further, and then posted its condemnation on the ACCJC website. And the 2013 ACCJC evaluation report included considerable innuendo that "some members of all college constituency groups have communicated misleading information about the Commission and its findings and actions relating to the college." (Show Cause Evaluation Report, p. 58)

365. Community college board members are elected public officials who are called upon at nearly every board meeting, and between board meetings, to deal with matters of public concern, to listen to and communicate with constituents, students, faculty and others about college affairs which involve matters of public concern.

366. Govt. Code section 54950 encourages communication between the members of a governing board and their constituents, declaring that public policy demands such communication:

> "[T]he Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them.

The people, in delegating authority, **do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.**" (Emphasis added)

367. ACCJC's actions in finding CCSF deficient in regards to Standard IV, Leadership and Governance, is unfair and unlawful for the reasons given above, including but not limited to because it violates 34 CFR § 602.18, which requires that decisions must respect the mission of the community colleges - in this case, the rights of democratically-elected trustees in a public institution; 34 CFR § 602.18 (a) and 34 CFR § 602.21, which requires that standards must be clear, and adequate to evaluate the quality of the education offered; 34 CFR § 602.13, which requires that standards be widely accepted; and, 34 CFR § 602.18 (c) which requires decisions to be based on published standards. .

The Commission's Decision That the College Did Not Meet Standard II (Student Learning Outcomes) Was Made Unfairly and in Violation of Federal Regulations

368. ACCJC found CCSF deficient as to Standard II in its 2012 and 2013 evaluations. Standard II addresses "Student Learning Programs and Services. The eight elements under "A. Instructional Programs," focus on the identification, assessment, and use for planning of "Student Learning Outcomes." 'SLOs" are expected at the course, department, and college level.

369. In addition to those unlawful and unfair business practices described elsewhere in this Complaint, ACCJC's evaluations as to Standard II and SLOs were performed through additional unfair and unlawful business practices, including but not limited to those described below.

2012 Evaluation of Standard II by the ACCJC

370. Contrary to law, the ACCJC fails to provide sufficient specificity of deficiencies:

a. The 2012 Report states, "However, the quality of self-reflective dialogue varies and college wide dialogue needs to be strengthened." (Report, p. 28) No indication is given of what "dialogue" meets the Standard, and in what way "dialogue" "needs to be strengthened."

b. The 2012 Report states, "... the implementation of SLO assessment, and the use of that assessment information to make changes, varies across the college. Some departments have exemplary processes in place, while others do not. Some program review reports address SLO assessment in depth; others treat the subject only in a cursory fashion or have incomplete information." (Report, p. 21) However, nowhere in the Report does the team indicate those departments which are criticized in these comments;

c. The 2012 Report states, "... evidence suggests that SLOs were not clearly stated in all course syllabi." (Report, p. 35) No specific syllabi are identified.

d. Inconsistency in Applying the "SLO" Standards

The 2012 Report concluded, on the one hand, that all courses had SLOs, and then it concluded they did not:

i) The visiting team confirmed that [CCSF] publishes in its catalog statements of ... course outlines include a variety of learning outcomes and objectives for its academic programs." (Report, p. 17)

i) "Student learning outcomes are in place for most courses and programs ..." (Report, p. 28)

iii) "the CCSF Self study Report did not accurately reflect the college's precet of courses, programs and services with defined student learning outcomes ..." (Report, p. 19)

iv) ".. the team recommends that the college ... advance its framework for defining ... [SLOs] for all courses, programs ..." (Report pp. 6, 29)

iv) "The evidence suggests that the college has made some progress in establishing SLOs." (Report, p. 35)

vi) To fully meet Standard II Student Learning Programs and Services, the team recommends that the college identify the intended student learning outcomes at the course ... levels."

The Report is inconsistent because one cannot determine if the team believes all courses, most courses, some or not enough courses have SLOs.

2013 Evaluation of Standard II by the ACCJC

371. The only reference to SLO's in the July 3, 2013 action letter is the following: "The Commission concluded that the college is still significantly out of compliance with....Standard II-Student Learning Programs and Services, including II.A. (Instructional Programs)..." (P.2)

Lack of specificity and inconsistency when a SLO Deficiency is identified

a) The 2013 Report states under Recommendation 4: Student Learning Outcomes that "the results of ongoing assessment of student learning outcomes should foster *robust dialogue* and yield continuous improvement of courses, programs and services and the alignment of college practices for continuous improvement." (Report, p. 6) This recommendation indicates that robust dialogue is lacking. However, no definition is provided in order to demonstrate what "dialogue" fulfills the Standard, nor what is meant by "robust." And then, the Report inconsistently adds under Recommendation 4, "There is robust dialogue regarding student learning outcomes and assessment across the college and this dialogue has been transformative for the college culture." (Report, p. 69)

The ACCJC does not clearly explain whether CCSF needs more robust dialogue or not.

b) The 2013 Report states, "...implementation and assessment of student learning outcomes (SLOs) was sporadic and uncoordinated. Some departments had fully developed outcomes and were actively using them, but other departments had only limited development or no development of SLOs." (Report, p, 19) The Report does not indicate which departments are fully developed, partially or not at all. However, right after this the Report inconsistently states. "Since the accreditation visit of the March 2012 Evaluation Team, the college has exercised substantial effort to address the Commission's recommendation in this area (Recommendation #4) and has achieved significant improvements in its levels of SLO implementation and assessment." (Report, p. 19) The ACCJC does not clearly explain whether implementation and assessment is sporadic and uncoordinated, or has achieved significant improvements.

c) The 2013 Report states, "In less than 25 percent of the course outlines sampled, course SLO documentation references outlines list "course objectives" rather than "major learning outcomes." While the objectives are phrased in terms of what the student will be able to do after completion of the course, not every objective is a true outcome." (Report, p. 21)

d) The 2013 Report states, "The college has clear and effective procedures in place to design and approve courses and programs, including course and program SLOs. The Curriculum Committee provides appropriate scrutiny to course outlines, assuring the quality and rigor of courses, and appropriate sequencing of courses within programs." (Report, p 23)

e) And it also provides that: "Nearly all courses and programs have now identified outcomes, and a majority are undergoing assessment..." (Report, p. 24)

Once again it is unclear - whether all courses have SLOs, are the proper procedures in place, or whether less than 25 percent have SLOs.

f. In regards to Program Review these inconsistent and unclear statements appear:

i. "The team recommends that the college *complete its work to fully implement* its model for Program Review for all courses..." (Report, p. 68)

ii. "Program review has *been fully implemented* for all instructional areas, programs and support services." (Report, p. 68)

Once again, it is not clarified whether they "fully implemented," or awaiting full implementation.

372. Both evaluations were internally inconsistent in violation of 34 CFR section 602.18(b).

373. Both evaluations do not clearly and with specificity, explain the particular facts concerning the alleged deficiencies, thereby violating 34 CFR sections 602.17(f), 602.18(b) and 602.25(c).

Evidence of ACCJC's Retaliatory Motivation

374. The ACCJC retaliated against City College by placing the College on Show Cause sanction and ultimately voting to terminate City College's accreditation because City College actively worked to continue the "open access" mission for itself and the California community colleges, a mission that differed from the vision supported by ACCJC and for opposed policies and legislation supported by the ACCJC.

375. Evidence of retaliation is found in the unfair and unlawful business practices alleged in this Complaint, in the Commission's pervasive violations of its own policies and procedures, and the timing of many of these actions in relation to CCSF's activities in support of the open access mission.

ACCJC's Policies, Procedures and Practices Deny Colleges Fair Procedure and Due Process. CCSF was Denied Fair Procedure and Due Process in the ACCJC's Evaluations and Decisions in 2012 and 2013

376. California law, ACCJC policy and the Federal regulations governing accreditation reviews, require that the accreditors provide fair procedure and due process.

a. California law demands that "[T]he orderly functioning of judicial review requires that the grounds upon which an administrative agency proceeded be clearly disclosed and adequately supported." *Medlock Dusters, Inc. v. Dooley* (1982) 129 Cal. App. 3d 496, 5012, relying on *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515 - 517.

b. In 34 CFR section 602.17, the Secretary of Education requires that reliable accreditors have "effective mechanisms" for evaluating colleges. Section 602.17(e) requires that an accrediting commission conduct "its own analysis of the self-study and supporting documentation furnished by the institution ... the report of the on-site review .." and other appropriate information, to "determine whether the instituiton ... complies with the agency's standards." The USDE's 2012 Guidelines state that the "level of involvement" of the agency's final decision-making body should avoid "rubber-stamping." ACCJC practices contribute to "rubber-stamping," including those alleged herein.

c. In its Policy on Commission Good Practice in Relations With Member Institutions, Element 21, the ACCJC promises that it will "Provide institutions due process concerning accrediting decisions made by the Commission." In its Policy on the Rights and Responsibilities of ACCJC and Member Institutions, the Commission again affirms that the "Commission has the responsibility to ... observe due process in all deliberations."

Allowing the Commissioners Just 24 Hour to Review Evaluative Reports

377. The evaluation reports of the site visit teams are reviewed, finalized and approved by the Commission staff, under President Beno's direction. Commission practice in effect at the time of the June 2012 ACCJC meeting to decide on CCSF's accreditation and make other decisions, dictated that copies of the CCSF reports, those of approximately 25 other colleges under accreditation review, and other reports to be received and reviewed for as many as 25 other colleges, would have been delivered to the commissioners at their hotel in Burlingame, CA, the night before the meetings began. This practice has been described publicly at ACCJC meetings by, upon information and belief, ACCJC Vice President Norval Wellsfry.

378. Providing the commissioners with tens of thousands of pages of reports the night before their closed meeting began, where they made accreditation decisions, gave them insufficient time to consider matters before them, and denied to the colleges under review, their students, faculty and the population they serve the fair procedure required by California law, the due process needed to satisfy ACCJC policy, and the due process and fair decision-making required under 34 CFR section 602.17(e). In 34 CFR section 602.18, consistency is a requirement of a reliable evaluator. Providing insufficient time for meaningful review of detailed evaluation documents contributes to inconsistency in decision-

making. As alleged below, the Commission has been inconsistent in its decision to place CCSF on Show Cause and then to disaccredit the college.

379. ACCJC's practice of providing insufficient notice to commission members of the documents which contain the "evidence" of evaluations**,** is an unwritten, underground practice, which is not set forth in the Commission's written policies and procedures. Because 24 hours is not sufficient time to fairly and impartially review the evidence and reports, this practice is contrary to 602.18(b), which requires effective controls against the inconsistent application of agency standards. Furthermore**,** it is contrary to 602.17, and 602.17(e) in particular. Section 602.17 provides that an accreditor must have "effective mechanisms" to evaluate a college before reaching a decision, and that it must conduct its own analysis of the self-study and supporting documentation, on whether the college complies with the Standards. The USDE's 2012 Guidelines for 34 CFR section 602.17(e) state that the "level of involvement" of the agency's final decision-making body in reviews should avoid "rubber-stamping." But affording insufficient review time increases the changes of "rubber-stamping" the recommendations of a team, or the staff of the Commission.

380. ACCJC's process of providing visiting team evaluation reports to the Commission just the night before the Commission met to decide on accreditation, contributed to the commission itself rubber-stamping the recommendations of the Commission staff, including the decision to place CCSF on Show Cause status in June 2012. Upon information and belief, ACCJC changed this practice for June 2013, due to the AFT 2121/CFT Complaint of April 30th 2013.

The Commission's Underground Practice of the Commission's President and Staff Orally Recommending Sanctions in Closed Meetings, Just Prior to Decisions, Denies Fair Procedure and Due Process, and Required Transparency

381. ACCJC amended its Policy on Public Disclosure in 2012, so it now states that its responsibility is, inter alia, to "**provide transparency in accreditation** in a manner that will **enhance public confidence in the educational quality of accredited institutions** and **protect the integrity of the accreditation process**." (2012 Policy on Public Disclosure, Background, ¶ 2) However, there is no transparency regarding the Team Recommendation. ACCJC president Beno informs the public that the Commission is transparent.

382. ACCJC engages in several unfair and unlawful practices which are inconsistent with

common law fair procedure:

a. ACCJC on-site evaluation teams are expected to prepare action recommendations. However, ACCJC declares that team action recommendations are confidential, and not made available to the institution or the public.

b. In the case of ACCJC's review of CCSF in 2012, upon information and belief: there was no team action recommendation, and although the team discussed Warning or Probation, it was dissuaded from making a recommendation from a high-ranking administrator-member of the team. Keeping such action recommendations confidential allows for error in the decision-making process.

c. ACCJC has, upon information and belief, made it a practice of increasing the level of sanctions recommended by teams in action recommendations. However, the Commission makes no record as to its reasons for doing so, and fails to provide facts or conclusions explaining why, thereby precluding effective challenge to such actions.

d. Upon information and belief: ACCJC's president provides oral recommendations for action as to colleges under consideration by the Commission. Such recommendations are made at the time the Commission meets to act on colleges accreditation, in closed session. These recommendations include, *inter alia*, sanctions, including sanctions higher than those recommended by on-site teams. In addition, the president has recommended sanctions when the team recommended accreditation. The ACCJC provides no information to the institution, or the public, concerning the content and rationale for these recommendations, and it maintains no record of such recommendations by the President. These activities increase the likelihood the Commission will rubber-stamp the recommendations of the president.

e. ACCJC does not discuss and decide on accreditation of colleges during public sessions, and fails to provide documents which inform the public and institutions as to the discussion on accreditation decisions, the rationale expressed at meetings for decisions, the evidence discussed at meetings regarding decisions, the voter and the vote among commissioners (if any) for decisions, and the recusals (if any) in regard to any discussion or votes taken.

f. ACCJC does not permit member institutions to seek review or appeal from decisions to place colleges on Show Cause sanction, despite the seriousness of the sanction.

ACCJC's Failure to Make Findings Necessary to Impose Sanctions or to Revoke Accreditation and Failure to Comply with the Common Law, Regulatory and Constitutional Requirements of Due Process

383. The evaluative process employed by ACCJC to evaluate CCSF suffered from a fatal flaw which goes to the heart of that process. The ACCJC lacks any standard that enables it to judge fairly and consistently whether to revoke accreditation in a way that fits with the purpose of the accreditation process and with the demands of due process. In its reports and decisions on both the 2012 show cause order and the 2013 disaccreditation order, the ACCJC failed to make any findings or recite any evidence in support of any findings pursuant to such a standard. In other respects the ACCJC failed to comply with the common law, federal regulatory, and state and federal constitutional requirements of due process. The ACCJC's actions and failings in this regard are described below.

384. 34 CFR Secs. 602.16 and 602.18 establish that the only purpose of the accreditation process is to assure positive educational outcomes for the students who attend the accredited institution. In the words of Sec. 602.16, the purpose is to reliably evaluate "the quality of the education or training provided by the institution...." In the words of Sec. 602.18, the purpose is to "ensure that the education or training offered by an institution ... is of sufficient quality to achieve its stated objective for the duration of any accreditation period ... granted by the agency."

385. 34 CFR Sec. 602.25 requires that the ACCJC and every other accrediting agency comply with due process when they revoke accreditation or impose other sanctions on an educational institution. Sec. 602.25 then defines what it means by due process. Under Sec. 602.25(a), the ACCJC complies with one aspect of due process when it:

> "(a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited ...."

A standard that fails to articulate how it serves the only purpose of the accreditation process would not be adequately specified. Under this regulatory requirement of due process, then, the ultimate standard that allows the ACCJC to refuse or withdraw accreditation must be based on that purpose and must clearly express its relation to that purpose.

386. The ACCJC is formed as a private non-profit organization and ordinarily would not be subject to constitutional limitations. However, here it has voluntarily undertaken to judge the accreditation of the CCSF, which is a public institution and a governmental entity, created pursuant to the statutes and constitution of the state of California, and subject to the constitutional limitations that apply to governmental institutions. CCSF is part of the statewide community college system, which is established pursuant to Education Code Sec. 70900. Sec. 70900 also establishes the Board of Governors of the California Community Colleges as the governing body for the entire community college system. Education Code Secs. 70901 *et seq.* set forth the powers of the Board of Governors. Under Sec. 70901, the Board of Governors has broad powers to set educational and administrative standards for the community colleges. The Board of Governors has enacted 5 CCR Sec. 51016, which states:

> "Each community college within a district shall be an accredited institution. The Accrediting Commission for Community and Junior Colleges shall determine accreditation."

In so doing, the Board of Governors has authorized the ACCJC to be the accrediting agency for all California community colleges and has delegated to the ACCJC the authority to shut down community colleges when the ACCJC denies or revokes accreditation. In delegating the accreditation authority to ACCJC, the Board of Governors has also of necessity delegated to the ACCJC the power to make and enforce on-going educational and administrative standards that the colleges must meet if they want to avoid disaccreditation.

387. The CCSF is subject to the constitutional limitations that apply to governmental institutions. The students, faculty and employees at CCSF have a corresponding right to have their interests and activities at the CCSF be governed by an entity that is subject to constitutional limitations. The students at CCSF have a constitutionally protected interest in continuing their education at CCSF. The faculty and other employees at CCSF have a constitutionally protected interest in continuing their employment at CCSF. The ACCJC has undertaken to act with governmental authority over CCSF and its students, faculty, and employees, having assumed the power to close down the institution through its power to revoke accreditation and thus the power to end students' studies and to terminate faculty and employee employment at CCSF. In order to exercise that authority, the ACCJC must comply with the

state and federal constitutional requirements of due process, the same as if the ACCJC were a full-fledged governmental agency.

388. Due process is a matter of common law applicable to private organizations such as the ACCJC.

389. Due process is also a requirement of federal regulation made applicable to the ACCJC through the ACCJC's pursuit of and acceptance of federal recognition for its role in the accreditation process. Moreover, ACCJC has a duty to respect State law in carrying out its accrediting function, for the reasons set forth above.

390. Due process is also a requirement of the state constitution, which under the circumstances of this case described above in paragraphs 379-80, applies to the ACCJC, despite its formal organization as a private corporation.

391. Due Process under all of these bases requires that the ACCJC hold a public hearing on the question whether to grant or deny continued accreditation, at which hearing the parties will be entitled to present all their evidence and legal arguments relevant to the decisions to be made by the hearing body. Due process requires that the parties be informed, well in advance of the hearing, as to the exact issues to be decided at that hearing. Due process requires that the deliberations of the agency decision-makers after the hearing be public and that the each of the persons voting on the decision and the agency as a whole be accountable for their decisions. Due process requires that the recommendations of the ACCJC president, staff, and review hearing committee be made available to colleges and the public at a meaningful time, before decisions are made based upon them. Due process requires that when a team recommendation for a particular sanction is increased by the Commission, or the president or staff recommend such increase, that their recommendation be provided to the college and public. Finally, due process requires that the Commission provide sufficient findings to bridge the analytical gap between raw evidence and the Commission's decisions. Such accountability for the decision requires that each decision-maker's vote be reported publicly and that the decision, when made, be made in writing, supported by ultimate and subsidiary findings, and that the findings be supported by evidence in the record. Because the individual rights of students, faculty and employees are at stake, due process requires that any finding to deny accreditation must be supported by findings and evidence showing that

there is a compelling case for the proposed denial. The ACCJC complied with none of these requirements in issuing its show cause order in 2012 and in revoking CCSF's accreditation in 2013.

392. In order for the accreditation process to serve its federally mandated purpose and to meet the requirements of due process, the accrediting agency must make one ultimate finding to support its decision to deny accreditation, following this model:

> "that the quality of the institution's educational and training programs is not high enough and the administrative and institutional support provided for those educational and training programs is not strong enough, such that, based on clear and convincing evidence, even after the accrediting agency properly notified the institution of the specific deficiencies in the program and gave the institution two years (or more for good cause), within which to correct the deficiencies, the institution has still not met minimum standards in achieving the stated objective of those programs, and there is no reasonable justification for a further extension of the time to correct deficiencies, or imposition of a lesser sanction, consistent with legal requirements."

393. In support of its ultimate finding, the agency must make subsidiary findings about the quality of the various educational programs offered by the institution and about the strength of the various institutional supports for the educational programs. The subsidiary findings must be about each of the relevant, legitimate standards promulgated by the accrediting agency. Implicit or explicit in every standard must be the condition that an educational institution's shortcomings with respect to the standard constitute an actionable "failure to meet the standard," or an actionable "deficiency," ***only*** when the shortcomings have resulted in a failure of the institution to maintain the required minimum level of educational quality or achievement in a significant respect and when in addition there is a substantial probability that the institution will continue to so fail during the upcoming review period.

394. All of the agency's findings must then be supported by clear and convincing evidence in the record before the agency, showing how all the evidence and all the subsidiary findings support the ultimate finding.

395. The ACCJC typically issues accreditation for a period of six years and has in the past regularly done so for the CCSF. At the end of the six years, the ACCJC conducts another review to determine whether it will accredit the school for the next six years. Therefore, in order to make the finding to deny accreditation to CCSF, the ACCJC should have made the following ultimate finding:

> "that the quality of CCSF's educational and training programs is not high enough and the administrative and institutional support provided for those educational and training programs is not strong enough, such that, based on clear and convincing evidence, even after the ACCJC properly notified CCSF of the specific deficiencies in the program and

> gave CCSF two years (or more for good cause) within which to correct the deficiencies, CCSF still has not met the minimum standards in achieving the stated objectives of that program, and a further extension, or lesser sanction, is not reasonably warranted."

In making the order to deny continued accreditation to CCSF, the ACCJC failed to make any such finding, failed to discuss the quality of the educational programs, failed to assess whether the administrative deficiencies would have any impact on the education programs, failed to make any subsidiary findings that would relate the alleged deficiencies to an unacceptable reduction in educational quality, and failed to cite any evidence that would support any such findings. It could not have legitimately made such a finding because (1) it failed to afford CCSF clear notice of deficiencies; (2) failed to afford CCSF sufficient time - two years or more - to correct actual deficiencies, and (3) committed the pervasive unfair and unlawful business practices alleged above, thereby prejudicing a fair review of CCSF.

396. The same principle holds true for the show cause order made by the ACCJC in 2012, except the level of proof may not need to rise to the level of establishing "clear and convincing evidence" or a "substantial probability." In order to support the show cause order, the ACCJC should have made the following finding or one similar to it:

> "The evidence establishes that the quality of CCSF's educational and training programs is not high enough, and the administrative and institutional support provided for those educational and training programs fails to meet minimum standards, and is not strong enough, such that the quality of the educational program does not meet minimum standards in achieving the stated objective of that program, and that there is a substantial and legitimate question as to whether CCSF will achieve the requisite standard within 2 years (or more for good cause) which the Commission will allow the College to meet these requirements."

The ACCJC would then have to make subsidiary findings in support of this ultimate finding, and all the findings would have to be supported by the evidence. Without such findings, the issuance of a show cause order cannot have any impact on shifting the burden of proof at the end of the show cause period. If it were to have such an impact, due process would require a stronger showing for the show cause order than ACCJC makes. In any event, when the ACCJC issued its show cause order, the ACCJC failed to make this or any similar finding, failed to make any subsidiary findings, and failed to discuss any evidence in the record that would support such findings and the severe sanction of Show Cause.

397. The Federal regulations on accreditation direct the primary focus of the accrediting agency to the educational programs offered by an institution, in order insure that the institutions will

meet minimum standards in fulfilling the educational objectives of those programs. It is entirely possible that an institution that offers many programs will be deficient in only one or a few. There is nothing in the Federal regulations regarding accreditation that requires disaccreditation of an entire college for deficiencies in only one or a small number of its programs. In performing its accreditation analysis, therefore, the agency must assess each individual educational program provided by the institution, to ascertain whether each program is meeting minimum standards in fulfilling its educational objectives. Except in extraordinary cases, it may not disaccredit a school as a whole for deficiencies it finds in particular programs. Rather, ordinarily, it may disaccredit the school only with respect to the educational programs that it finds are deficient. In 2012 and 2013, the ACCJC found no educational programs offered by the CCSF to be deficient with respect to the achievement of their educational objectives, and found no administrative support that was so lacking as to prevent the achievement of their educational objectives. The ACCJC's primary complaint was that the CCSF did not do what the ACCJC told it to do in regard to several administrative matters. That is not legally sufficient grounds for disaccreditation.

398. At all relevant times before, during and after the making of the show cause and disaccreditation orders, the members of the ACCJC had a special duty to inform themselves about the law relating to the accreditation of community colleges. At all relevant times before, during and after the making of the show cause and disaccreditation orders, the ACCJC represented to the public and to the CCSF students, faculty and staff, both verbally and in the documents they posted on the internet and provided directly to CCSF, that they were qualified to engage in the business of accrediting community colleges, that they knew the laws that applied to that business, and that they would strictly comply and were complying with all applicable federal regulations and other legal requirements. Such representations were false. In particular, the ACCJC failed to comply with the regulations and the law as described above.

399. The actions and failings of ACCJC described above in paragraphs 375-390 deprived the plaintiffs, the CCSF, and residents of the CCSF community college district of their rights to have CCSF's accreditation adjudicated in accordance with the law and rendered both decisions by the ACCJC void and/or voidable.

400. Each of ACCJC's actions and failings described above in paragraphs 375-390 constituted an unlawful, unfair and fraudulent business act or practice in violation of Business & Professions Code Secs. 17200 *et seq*.

401. The ACCJC's 2012 show cause order and its 2013 disaccreditation were based on the conduct described above in paragraphs 375-390. The issuance of those orders, based on that conduct, constituted unlawful, unfair and fraudulent business acts or practices in violation of Sections. 17200 *et seq*.

402. Plaintiffs have been damaged by such acts or practices as more particularly set forth above.

ACCJC Failure to Hold Public Hearings for Colleges Before They Are Placed on Show Cause Sanction Or Disaccredited Is Unfair and Unlawful and Denies Due Process or Fair Procedure

403. CCJC does not provide a meaningful public hearing for a college and those who are directly affected by ACCJC's decisions, before the college is placed on Show Cause sanction or disaccredited. No review or appeal is permitted for the sanction of Show Cause. The only sanction which has reivew/appeal rights is disaccreditaiton. Neither does it afford a meaningful opportunity to appeal such decisions. As a result, there is no opportunity for students, employees or the public to offer their views on the issues relevant to a Show Cause sanction or disaccreditation, and on the appropriateness of such severe and inherently harmful sanctions. Nor is there any opportunity for a meaningful hearing, in which the alleged basis for these sanction must be fairly presented, and in which a college (CCSF) and its constituencies are afforded an opportunity to correct mistaken information, to rebut allegations, or to demonstrate the impropriety of a proposed sanction. In other words, there is no real opportunity to fairly contest accusations which could lead to cases like this, where 850,000 residents of California's fourth-largest city face the loss of their only public community college, and the Constitutionally-protected right to education which it offers them.

404. ACCJC has a convoluted, multi-layered "review" and "appeal" procedure which omits meaningful notice or appeal rights.

a. Colleges are not advised of what action has been recommended to the Commission by a site visit team, or Commission staff, before the Commission acts, or after.

b. Colleges receive copies of the visiting team's draft report, but are given no public or private hearing before the Commission, where they can meaningfully challenge recommended actions. While they are afforded a "brief" appearance to discuss the facts, without knowledge of the proposed sanction or other action, they are denied adequate notice as to which particular issues are being given emphasis by the team or staff. And after the brief appearance, the college representative is ordered to leave, the team chair speaks confidentially with the Commission, and the Commission then deliberates and decides in private.

c. Requests for review are vetted by the Commission President and Chair, who may dismiss them without appeal. When a Request is heard, the limitations severely restrict any meaningful opportunity to contest a Commission decision. The Commission president appoints a "review committee." Its meeting is confidential, and the college is restricted in presenting information - any information not considered by earlier by the Commission is strictly forbidden. It is allowed a brief appearance. The decision of the Review Committee is confidential and not provided to the public or the college, and it is advisory to the Commission. The Commission then holds a confidential meeting to accept, reject or modify the decision. Neither the public nor the college is allowed argument before the Commission.

d. After the "final" decision of the Commission is issued, the college may appeal to a hearing panel appointed by the president and two other members of the Commission. The appeal procedure is voluminous and convoluted, and may result in a variety of outcomes, including remand to the Commission and a new, unappealable decision.

e. The public is denied participation, attendance at hearings, and adequate information about the review and appeal proceedings as they occur.

405. Under California law, which controls the contract between ACCJC and its member institutions, ACCJC must provide due process, or common law fair procedure, prior to determining that a college warrants a show cause sanction or disaccreditation. It is unfair and unlawful for ACCJC to fail to provide such hearings which offer a meaningful opportunity for the College to defend itself, and for directly interested parties and the public to present their views.

406. Once accreditation has issued, under California law a college has a property interest in the

continuation of accreditation. ACCJC's disaccreditation order, as well as Show Cause, deprived CCSF of a protected interest in this property. The risk of an erroneous deprivation from sanctions imposed by the ACCJC on California community colleges is great. Issuance of Show Cause, or disaccreditation, imposes immediate losses on a college - in enrollment and funding - which cannot be mitigated by a post-sanction hearing process.

407. CCSF's students and employees, and San Francisco's residents have huge interests at stake which are endangered by unwarranted Show Cause or disaccreditation sanctions. The State itself has such interests, since CCSF holds State property in trust, in fulfilling the mission of the California community colleges and California's Constitutional obligations to provide educational opportunities, and to allow their fulfillment. CCSF, its students, employees and the Public have a legitimate claim of entitlement to the protection of these interests through fair due process procedures employed by the ACCJC to evaluate colleges for accreditation, including fair public hearings on severe sanctions, in which all those affected are afforded a meaningful opportunity to present their case against disaccreditation or show cause sanction. As the State's designated determining of the continuation or closure of a community college, ACCJC has violated the minimum requirements of due process and fair procedure which accompany these severe sanctions.

408. The accreditation activities of the ACCJC are of of public or at least "quasi-public significance," and the question of whether CCSF should be severely sanctioned, and the nature of that sanction, are matters of "public" significance. ACCJC is tinged with public stature or purpose. ACCJC embraces this role. It constantly reminds the public and the community colleges of its larger public purpose, to assess colleges adherence to standards, and to improve quality. For instance, it declares:

> "The Commission **serves the public interest** by providing information on its actions to institutions, the public, and students." (Statement on the Benefits of Accreditation, 2011 Accreditation Reference Handbook, p. 32, ¶ 2)

> "Actions of the Commission regarding the accredited status of institutions as described in the Policy on Commission Actions on Institutions **are public actions**." (Policy on Disclosure, 2011 ed., p. 89)

> "The Commission provides **to the public** an assurance that through external evaluation the institution conforms to established standards of good practice in higher education, and that its credits, certificates, and degrees can be trusted." (*Id*., p. 33)

> "The ACCJC and its member institutions **shall provide information about the results of institutional accreditation reviews to students, the public**, employers, government agencies and other accrediting bodies. Students and others rely on accreditation status as an indicator of educational quality, and **there is growing public interest in accreditation** processes and the outcomes of accreditation reviews for individual institutions." (*Id.*)

> "The Commission believes that the two major responsibilities of institutional accreditation are **quality assurance to the public** ... The purpose of this policy is to strengthen the ability of institutions and the Commission to fulfill mutual obligations to inform, to educate and to **enhance the level of public confidence** in higher education institutions ..." (See ACCJC Policy on Public Disclosure and Confidentiality in the Accreditation Process, 2011 ed., p. 87, ¶ 1)

> "... the goals [of accreditation] are: 1. To make a meaningful contribution to the body of information **available to consumers** of higher education services ... 3. **To enhance public understanding** of institutions of higher education through peer review ..." (Id., p. 87)

ACCJC amended this policy in 2012, so it now states that its responsibility is, *inter alia*, to "**provide transparency in accreditation** in a manner that will **enhance public confidence in the educational quality of accredited institutions** and protect the integrity of the accreditation process. " (2012 Policy on Public Disclosure, p. 103)

ACCJC's Policy on Public Disclosure etc. states that the Commission "maintains a website which informs members and the public about the Commission and its practices ..." The Commission indicates also that its newsletter is "available to the public on the ACCJC website." *Id*. Further, "A list of upcoming comprehensive evaluation visits is available to the public upon request." And, "The Commission publishes handbooks, manuals and other materials which describe the Commission and its process; these are available to the public, on the ACCJC website." *Id.*

Moreover, the Policy on Public Disclosure explains that the "Commission and Commission staff make presentations before organizations ... and the public at large." *Id*.

There are many more statements by the Commission of its public purposes.

409. City College's status as a public institution that provides low cost higher education to over 75,000 students also indicates that its accreditation status is a matter of public concern and significance. Moreover, it's status as the only public community college in the City and County of San Francisco, underscores the interests at stake and thus emphasizes the importance of the requirement of a public hearing.

410. The nature of the interests at stake here demonstrate that the ACCJC was required by law to provide due process and fair procedure, including a public hearing, prior to acting to place CCSF on

show cause status or deciding on disaccreditation. The harm from issuance of the these sanctions is severe and continuing. These actions interfere in the property and liberty interests of San Francisco residents in having a local, open-access, public community college for their educational needs. These deprivations were not and cannot be justified because they inflicted after meetings which were held in a confidential, closed settings where the public and interested parties such as students and faculty, were excluded, and denied an opportunity to present their views. Similarly, denying access to the public to Commission meetings where the Commission decided on sanctions, including disaccreditation, is contrary to due process and fair procedure in view of the interests at stake. Having been delegated by the State of California to serve as the decider as to whether to close a California community college, ACCJC has a legal obligation under California law fair procedure to conduct open, public hearings where such matters are decided by it.

411. The City and County of San Francisco, the residents who rely on the College to educate them and their children, and their children's children, and the investment of the citizens of San Francisco and the People of California in CCSF, demonstrate the nature and scope of the interests at stake when a College is placed on Show Cause or disaccredited. Education is a Constitutional right in California, and the residents have a right to the continued operation of a local, public community college within the boundaries of the City and County of San Francisco. CCSF fulfills the open access mission of CCSF, a mission which has remained in effect for more than half a century. CCSF exemplifies the interests of California in providing for the education of its residents.

412. The interests involved here include (a) the continued education of more than 75,000 students, (b) the continued employment of nearly 900 tenured faculty, another 600 faculty with re-hire preferences under the expired, and other employees, (c) the numerous opportunities that CCSF provides to the residents of San Francisco, (d) the Constitutional and statutory rights of the people of San Francisco to a local public community college, and (e) the public functions served by a fair accreditation process.

413. Also at stake here is the multi-million dollar investment of the City and its residents in CCSF, which over half a century has been enlarged and developed by the taxes of the residents of the City, for the benefit of themselves, their families and their descendants. This enormous investment

stretches from the large Ocean campus, its excellent facilities, its impressive library with its Diego Rivera mural, to the many satellite campuses operated to serve the residents, including the new campus to serve Chinatown. This investment is in more than physical facilities. It includes the wide range of programs specially designed for San Francisco's unique and multi-ethnic population, and the faculty and staff who over time have created exemplary academic departments and vocational programs which serve the needs of San Francisco's population. CCSF's trustees hold CCSF in trust for the People of San Francisco, but having been removed, the People are now disenfranchised, a situation exacerbated by the failure of the ACCJC to adopt and follow the law and fair procedures, as alleged herein.

414. Ultimately at stake is the future of not just the City of San Francisco, but especially its residents, their children, and their descendants. Had there been a right to a hearing afforded by lawful ACCJC procedures, the People would have been able to exercise their rights before the Commission and the Commission would have received information crucial to the fair and reasonable resolution of the issues presented in this case.

415. The facts alleged in this Complaint to establish that the Commission is sufficiently "tinged with public stature or purpose" to be bound by California law governing fair procedure, and that an accredited college such as CCSF has a reasonable expectation of fair procedure, and that decision on its continuing accreditation will be fairly made. It has a right to receive adequate notice and a fair opportunity to be heard before an impartial tribunal, when an accreditor finds serious deficiencies, where the public has an opportunity to appear and have some form of participation.

416. Having assumed its role as the guardian of college quality, ACCJC is also responsible for satisfying fair procedure in its assessments. In order to satisfy fair procedure under California law, ACCJC must offer a meaningful opportunity for colleges, students, employees and the public to respond to a proposed sanction, before the Commission decides, and to appeal a Show Cause sanction before harm results from the imposition of a sanction.

417. If, for any reason, the court determines that it is not unfair or unlawful to fail to provide a pre-sanction hearing, then ACCJC should be required to provide a full, post-sanction public hearing, that affords timely and meaningful due process, and which assures that the sanction does not become effective until after the hearing occurs, with reasonable fair procedures, including a hearing before a

reasonably objective panel.

ACCJC Efforts to Conceal Its Violations of Regulations, Policy and Law

418. As alleged above, ACCJC has taken actions to suppress disclosure and discussion of its unwritten policies and its practices, which are outlined herein. These actions include:

a. Declaring that once a person has served on a visiting team he or she is forever barred from disclosing what occurred in connection with that activity.

b. Declaring that once a person has served on a visiting team, he or she is forever represented by the ACCJC's attorneys with respect to matters involving that visiting team, despite the absence of any agreement for such representation, and against her or his will.

c. Requiring that personal notes, emails and other writings which may reveal Commission actions, including its violation of California law, ACCJC policies, and Federal regulations, must be destroyed or turned over to ACCJC President Barbara Beno, once Ms. Beno determines with or without any basis, that they are no longer "necessary to retain.". A new policy providing fo this was adopted by the ACCJC on June 7, 2013, in violation of ACCJC's bylaws, and in reaction to the CFT/AFT 2121 complaint filed with the USDE.

419. The practices described above:

a. violate common law fair procedure under California law.

b. deny due process as required under ACCJC's own policies.

c. deny due process as required under 34 CFR part 602.

ACCJC's Standards and Their Implementation Constitute Unfair and Unlawful Business Practices Because They Disregard California's Constitutional Right to An Education and Do Not Fairly Measure Academic Quality of an Institution

420. ACCJC's evaluation of a college's compliance with its Standards and Requirements, are assessed using a simplistic checklist approach, which as alleged herein has failed to provide CCSF and other colleges with adequate specification of deficiencies, and leads to wildly varying and inconsistent outcomes, from accreditation to disaccreditation. ACCJC must evaluate a college's performance in view of the ultimate purpose behind accreditation - measurement and assurance of institutional quality. Yet ACCJC has adopted Standards, applied Standards, and issued sanctions in a manner that routinely fails to gauge the impact of alleged deficiencies on a college's actual quality.

421. Furthermore, ACCJC's application of its Standards fails to take into account that in California, a higher education - a community college education - is a *fundamental right* of all residents, protected by the California Constitution. *Serrano v. Priest*, 5 Cal.3d 584, 604-610 (1971) Disaccrediting CCSF, unless it is the only option available to address sufficiently serious deficiencies which mean the college is providing a substantial education that is provably unremediable, by clear and convincing evidence, would leave a profound gap in the educational opportunities available to the residents of the fourth largest city in California - an unconstitutional gap. Both the employees and the students of CCSF will be directly affected by the ACCJC's decision to withdraw accreditation from CCSF and their property and liberty interests will be taken and/or seriously impaired, because that decision will lead to the closure of the school, the loss of the employees' jobs, and the loss of the students' educational opportunities at that school.

Disaccreditation will inflict a severe loss on the entire San Francisco community, because it will leave the city of San Francisco without any reasonably priced, publicly funded community college and without the educational and cultural benefits that a local publicly funded community college provides to the whole community. Disaccrediting CCSF will shut down one of California's most effective community colleges and interrupt or destroy the educational hopes of tens of thousands of San Franciscans. Closing CCSF will have catastrophic adverse impacts on CCSF and on all those who are directly interested in and affected by CCSF.

422. ACCJC's disaccrediation sanction, and its Closure policy, are unfair and unlawful because they fails to fairly, reasonably and effectively take into account the purpose of accreditation and the impact of college closure on this Constitutional right of the residents of San Francisco. The ACCJC Policy on Closing an Institution focuses on its own view of the institution's obligations to students, and in the ACCJC's view, those obligations are few - primarily focused on notice and limited assistance for those who have completed "75 % of an academic degree [or] educational program." (See ACCJC Policy on Closing an Institution, attached hereto as **Exhibit 3**, p. 34). Students who are less than 75% of the way to a defined degree or program, are offered nothing substantial. Whether a student is 20% towards a defined degree, or 90%, there is no mechanism to correlate the degree or program the student is enrolled in with alternative educational options available nearby, if any. And for students who have not yet

defined a specific educational goal, there is no consideration at all. Non-credit ESL students, disabled students who avail themselves of the College's disabled students programs, and other populations of students are totally ignored in the ACCJC Policy.

423. An accrediting agency exists to give assurances to the public that a college currently meets minimum standards of educational achievement and will likely continue to do so until the next accreditation review. ACCJC conducts reviews on a six-year cycle. 34 CFR Sec. 602.16(a) requires that each accrediting agency maintain standards that are "sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of education or training provided by the institutions or programs it accredits." However, even though the standards may be "sufficiently rigorous," they are still at some level minimum standards. Therefore, in order to fulfill this role, the agency may revoke accreditation only when it finds that the college fails to meet those minimum standards, they have a *demonstrable present impact* on academic quality, and the College has been unable, given at least two years (or more for good cause), to remedy the deficiencies. ACCJC does not follow any such rule.

424. Given the Constitutional rights of students and residents to an education in California, and the role of an accreditor, a decision to revoke accreditation can only be made when the agency has balanced *all of the relevant factors* and determined that the educational institution *has not met the minimum standards and that the harm from the continued deficiencies identified by the agency outweighs or substantially undermines the educational benefits to the community that would accrue from the continued operation of the institution*. ACCJC does not apply any such rule.

425. ACCJC's Standards, on their face and as applied, fail these requirements. The Policy on Commission Actions on Institutions addresses sanctions by assessing whether there is a little bit of deficiency ("to the extent that gives concern to the Commission") or a lot of deficiencies ("deviates significantly" or "substantial non-compliance"), but there is no place for the review of the actual present impact on satisfying the college's educational mission, or reducing the quality of education below the minimal level required by the Secretary of Education in USDE regulations.

426. As an example, ACCJC's July 3, 2013 action letter to CCSF focuses first on the college allegedly not addressing "all of the deficiencies" previously outlined. (Letter, p. 2) Then it cites the college for not following enough of the ACCJC's recommendations. When it looks at Leadership and

Governance, it condemns the college for not moving “with appropriate speed” to resolve its problems, and make “needed changes.” It condemns differences of opinion by the faculty, students and the public about what should be done, it even condemns criticism of changes for being “too fast” when ACCJC demanded fast changes. But what it does not do is offer evidence proving that the College’s alleged failings have actually harmed academic quality. Nor does it take into account that the Commission is responsible for there not being enough “time” to measure CCSF’s attempts to “meet” ACCJC requirements, when ACCJC dictated the amount of time given. Nor that differences of opinion are perfectly acceptable in a pluralistic, democratic society.

427. The mission of the college is relevant in determining what due process requires before the accreditation of a California Community College can be revoked. Here, ACCJC has ruled that accreditation should be revoked because CCSF has failed to comply with recommendations of the ACCJC, even though they were initially presented as *suggestions to improve* in 2006. It’s accreditation is being used by ACCJC as a punishment for CCSF’s perceived failure to comply with ACCJC’s recommendations and directives, even when any “delays” have had no provable adverse impacts on educational quality.

428. ACCJC’s disaccreditation had nothing to do with the seriousness of any alleged legitimate deficiency in regard to actual educational quality, or with a failure of CCSF to deliver an exceedingly strong academic “product.” Rather, ACCJC has increasingly, and in the case of CCSF, used sanctions to coerce colleges to comply with each and every one of ACCJC’s directives. Those directives include the underground requirements of the Commission (a) that the College spend only about 83% of the unrestricted general fund budget on employee salaries, (b) that the college maintain reserves greater than the 5% required by the State, (c) that the college implement pre-funding of OPEB over a 30-year time frame. These requirements, and others, have no demonstrable impact on the likelihood that the college will meet the basic educational achievement standards within a college’s upcoming accreditation review cycle.

429. Deficiencies should lead to Show Cause or disaccreditation only when by clear and convincing evidence, they provably outweigh or substantially undermine the educational benefits to the community that would accrue from the continued operation of the institution, so as to support the

conclusion that the college will not meet the basic educational achievement standards within the upcoming accreditation review cycle. In California, this requires giving weight to the Constitutional rights of the residents to a local education. Only with such an application of its Standards, given its monopoly power over the life or death of a college, can ACCJC respect the mission, the social importance, and the Constitutional rights to an education of the students and the residents of San Francisco.

430. ACCJC accredits only 140 institutions, and of these, most are California community colleges. It is the smallest of the regional accreditors, but it issues the most sanctions, more than any accreditor in the country. It has taken public community colleges to the brink of closure, before actually disaccrediting City College of San Francisco. In disaccrediting CCSF, the ACCJC has committed flagrant and pervasive unfair and unlawful business practices, to the disadvantage of the students and faculty of CCSF and the residents of San Francisco.

431. In summary, ACCJC's Standards and their implementation fundamentally fail to provide reliable indications of academic quality, and hence are unfair and unlawful business practices.

Colleges Fail to Challenge the ACCJC Because of Fear of Sanctions Leaving it to Plaintiffs To Enforce the Rights of the Students, Faculty and the Residents of San Francisco

432. The ACCJC uses its authority as an accreditor to intimidate community college employees, representatives and the institutions so that they are unwilling to challenge ACCJC's unlawful and unfair business practices. This climate of fear is evident from, but not limited to, the following examples involving the Peralta Community Colleges, Santa Barbara City College, Solano community college, Redwoods community colleges, and CCSF.

433. **Peralta Community Colleges**. On May 9, 2006 the Berkeley *Daily Planet*, a local newspaper with a small circulation, published an article critical of ACCJC. The article quoted Michael Mills, the president of the Peralta Federation of Teachers, AFT Local 1603, as stating: "... the leading administrators of the [ACCJC] have a vendetta against the Peralta college district, and that the ACCJC 'is operating like a star chamber' with a 'process that is out of control.'" Mills was also quoted as saying that the four Peralta colleges were put on Warning because of unfunded medical liabilities, micro-managing by the district board, and for not having a strategic plan, and that "None of these were

accreditation standards." (Letter, ACCJC to O'Malley, May 22, 2006, and ACCJC to Mills, May 22, 2006 entitled: "Defamation." A copy of both letters is Attachment 1A in the Local 2121/CFT Complaint to the USDE and ACCJC, and is posted with all the attachments at www.cft.org , last accessed Sept. 19, 2013) In the same article, the President of the Peralta Board of Trustees was quoted as saying words to the effect that ACCJC operates "without a lot of oversight."

a) On May 22, 2006, Joseph Richey, the Chair of ACCJC, wrote Mr. Mills, the Berkeley *Daily Planet*, and the President of the Peralta Board of Trustees on behalf of the ACCJC. Richey accused Mills of making "false and defamatory comments about ACCJC and about ... Barbara Beno and Deborah Blue." Richey referred to criticism's of ACCJC and President Beno attributed to Mills, and on behalf of ACCJC, demanded that Mills provide him with "copies of your communications to the Berkeley *Daily Planet*," and that "the statements attributed to you have serious legal implications." Richey also demanded that Mills "personally apologize for his *defamatory remarks*" to Ms. Beno. The letter clearly indicated that ACCJC considered the criticisms allegedly made by Mills to be defamatory.

b) Richey also accused Peralta trustee Hardy of defamation. He asserted that the statement ACCJC "operated without a lot of oversight" was defamatory. He demanded a "full retraction" as to each allegedly defamatory statement he listed in the letter.

434. **Santa Barbara City College** was a finalist for the Aspen Prize for Community College Excellence in 2011, and was a co-winner of the prize one of the two finest community colleges in the country in 2013. This did not prevent intensive scrutiny by ACCJC, arising out of the election of 4 new trustees in Fall 2011 who apparently dismissed Andreea Serban as President. Serban has been selected by ACCJC to be a team member or chair of several visiting teams. After the election, one trustee held meetings on campus where students could meet her. The ACCJC decreed this was improper. Later, after Serban and/or a group of citizens opposed to the new trustees, filed a complaint with the ACCJC, President Beno ordered an investigation of the college in violation of ACCJC policy. SBCC was subsequently placed on Warning.

435. When President Barbara Beno visited the College's main campus on March 29, 2012 and gave a presentation in which she "discussed CR's Show Cause sanction at a **public meeting** in the CR Forum Theater and at College Council before about a hundred faculty and community members

attended, Beno announced "that she did not want her comments documented or directly quoted for broadcast or publication."

436. ACCJC expressed to CCSF that it could not disclose public information, CCSF's "request for review" letter and evidence, because all Commission proceedings involving accreditation are "confidential." CCSF relied on ACCJC's directive, in violation of the California Public Record Act.

437. **Solano Community College and Redwoods Community College**. ACCJC has indicated that presentations by president Beno at public meetings of the school board, cannot in some cases be recorded. Such a directive was made as to Solano College in 2009, which then arranged to eliminate a link on the school newspapers website which connected to a legally-made recording of the public meeting. And, as alleged above, Beno gave a similar directive at a public meeting in Eureka, California, in February 2012.

438. **CCSF**. In July 2012, ACCJC issued a press release challenging the accuracy of remarks made by unspecified individuals at a KQED broadcast about the Show Cause sanction. ACCJC questioned CCSF trustee Rafael Mandelman and other trustees, about a newspaper opinion article he wrote in March 2013. CCSF and the State Trustee have refused to make public its statements of reasons for its request for review, and refused to include the USDE's August 13, 2013 letter in its request, because this would mean going against the Commission.

CAUSE OF ACTION
VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
AGAINST ALL DEFENDANTS

439. PLAINTIFFS hereby incorporate by reference paragraphs 1 through 362 inclusive.

440. The acts of the ACCJC alleged hereinabove, to place CCSF on Show Cause and then to order CCSF's Disaccreditation, and the numerous practices described above which led to these sanctions, are unfair and unlawful in that they are arbitrary, capricious and unreasonable, and breach ACCJC's fiduciary duty to CCSF, the public and the public colleges it accredits. ACCJC's actions were not exercised in the public good, and are contrary to the public policy of California. These acts violated numerous provisions of Federal regulations alleged above and California's common law fair procedure doctrine.

441. The unlawful and unfair business practices of DEFENDANTS, as described above,

present a continuing injury and threat of injury to the students and employees of CCSF, and the residents of San Francisco, for the reasons described above. This injury includes, but is not limited to, the impairment of the right to an education possessed by the students of CCSF and the residents of San Francisco, and their collective right to a local, public community college. For the employees, these actions present an actual loss and a continuing threat of loss of tenure and other employment rights, including but not limited to retirement income through the CalSTRS system.

442. California Business and Professions Code Section 17200 prohibits any "unlawful, unfair or fraudulent business act or practices." The acts and practices described above constitute unfair and unlawful business practices, and unfair competition, within the meaning of Business and Professions Code sections 17200 *et seq*. The ACCJC committed unfair and unlawful business practices when it issued the order of Show Cause and Disaccreditation, because those orders were based on and were the outcome its unlawful and unfair acts alleged herein. Among other things, the acts and practices of DEFENDANTS have taken from PLAINTIFFS, the class members they represent, including the public of San Francisco, the educational opportunities and employment they are rightfully entitled to from an accredited CCSF, while enabling ACCJC to disregard its obligations to be a fair and impartial evaluator and accreditor of CCSF. ACCJC's actions, policies and practices, as set forth in this complaint, constitute unfair business practices because they offend established public policy and cause harm that greatly outweighs any benefits associated with those actions, policies and practices.

443. The unlawful and unfair business practices of the DEFENDANTS, as described above, present a continuing injury and threat of injury to the students of CCSF, the employees of CCSF, and the residents of the City and County of San Francisco.

444. PLAINTIFFS, other students and employees, and the other residents of the City and County of San Francisco, have no other adequate remedy at law in that the ACCJC has revoked CCSF's accreditation effective July 31, 2014, and unless disaccreditation is enjoined, they will no longer have an opportunity to attend CCSF and pursue their Constitutional right to a higher education at CCSF.

445. As a result of the aforementioned acts, PLAINTIFFS and class members have lost money or property, and suffered injury in fact.

446. Section 17203 and Code of Civil Procedure section 526 provide that a court may make

such orders or judgments as may be necessary to prevent these unfair and unlawful business practices. Injunctive relief is necessary and appropriate to prevent ACCJC from continuing to engage in, and give effect to, its unlawful and unfair acts and practices as alleged above.

447. As a direct and proximate result of the aforementioned acts and practices, PLAINTIFFS and the Class members have suffered a loss of money and property, and will continue to suffer these losses as alleged, involving, *inter alia*, loss of wages and benefits which are due and payable to them, and loss of educational opportunities to attend CCSF and meet their educational goals and objectives, resulting in additional costs and expenses of education, and loss of their rights as alleged above.

448. PLAINTIFFS' success in this action will enforce important rights affecting the public interest and in that regard, PLAINTIFFS' sue on behalf of themselves as well as others similarly situated. PLAINTIFFS and the Class members seek and are entitled to injunctive relief, and all other equitable remedies owing to them.

449. PLAINTIFFS take upon themselves enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, which seeks to vindicate public rights. It would be against the interests of justice to penalize PLAINTIFFS by forcing them to pay attorneys' fees in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure section 1021.5, and otherwise.

450. Wherefore, PLAINTIFFS and the Class request relief as hereinafter set forth.

NECESSITY AND ENTITLEMENT TO INJUNCTIVE RELIEF

1. PLAINTIFFS have no adequate remedy at law for the unfair and unlawful business practices engaged in by the DEFENDANTS.

Harm and Irreparable Injuries

2. PLAINTIFFS, and each of them, and those for whom they are suing, and CCSF, have suffered, and unless enjoined will continue to suffer, great and irreparable harm as a result of the unlawful and unfair business practices of the DEFENDANTS.

a. As a result of disaccreditation, the PLAINTIFFS, and the residents of the City and County of San Francisco whom they represent will lose the local, county-based public community college to which they have a right under California law. As a result of the DEFENDANTS unlawful and unfair business practices, PLAINTIFFS, their children, and grandchildren, and the residents of San Francisco will lose their property and liberty interest in a continuing community college in San Francisco, thereby interfering in their Constitutional right to an education. As a result, the City and County of San Francisco will lose the long-term economic benefits resulting from the education of residents of San Francisco, and the value of its investment in CCSF. According to a study issued on September 18, 2013, the City and County could lose economic value that derives from CCSF in an amount approaching $300 million each year.

b. The ACCJC's orders of Show Cause and Disaccreditation, and the other unlawful and unfair business practices alleged herein, have harmed and will continue to harm the public interest and the residents of the City and County of San Francisco. Students who have completed less than 75% of their educational requirements are being left to find another college if they want to and are able to continue their education. They now have to or will have to expend more monies to obtain enrollment. They will pay more to attend another college in tuition, commuting or travel costs, and in many cases they will be unable to gain entrance to a replacement and/or an equivalent program or college. Many will be unable to afford another college.

c. Approximately 1,500 faculty face loss of their jobs and benefits, their seniority, future loss of pension contributions and pension amounts, and the other benefits of employment by CCSF. Some faculty, as alleged above, have already been terminated, with attendant loss of past, present and future pay and benefits.

d. CCSF has already suffered a loss of approximately 15,000 - 25,000 students, and is facing reductions in State support which will threaten cutbacks in college programs and future layoffs of PLAINTIFFS and employees.

e. PLAINTIFF part-time faculty members who have been laid off as a result of ACCJC's actions alleged above, have lost employment, pay, benefits, seniority, and future contributions to the CalSTRS retirement, and will continue to suffer such losses.

f. PLAINTIFF students who have had to leave CCSF as a result of ACCJC's actions alleged above, have suffered loss of money and property because of the additional costs to obtain education elsewhere, loss of employment opportunities resulting from the interruption in their education, loss of their status as anticipated graduates of an accredited institution within the time period they reasonably had relied upon, and the loss of their opportunity to complete their educational or vocational program at CCSF, all of which losses are losses of liberty and property.

g. CCSF has lost students, and will continue to lose students, leading inevitably to a continuing loss of income which, even if CCSF survives, will reduce the funds available for wages and benefits of employees.

h. CCSF has already suffered a downgrading of its bonds, as alleged above.

i. Even if CCSF were to be removed from disaccreditation or show cause sanction, the officers, agents and representatives of ACCJC would have authority to continue to evaluate CCSF, notwithstanding their conduct as alleged above. Absent an injunction recusing them from participation, the unfair and unlawful practices alleged herein would be at risk of continuing.

Likelihood of Success on the Merits

3. PLAINTIFFS are reasonably probable to succeed on the merits and are entitled to the relief demanded.

a. The PLAINTIFFS are reasonably likely to succeed on the merits, given that the USDE has found that DEFENDANT ACCJC's conduct is in violation of Federal regulations, as set forth in the Department's letter of August 13, 2013.

b. The allegations allege, and the facts demonstrate, that plaintiffs are likely to succeed on the merits of their allegations of unfair and unlawful business practices. As alleged above, DEFENDANTS have disregarded Federal requirements, their own policies, and California law, in their actions to leading up to and including their decision to order disaccreditation.

The Balance of Harm and Equities Favors Plaintiffs

4. The balance of hardships tips sharply in favor of the Plaintiffs and those they represent, or whom are similarly situated. The party most likely to be injured absent injunctive relief, is the PLAINTIFFS, the students of CCSF, the employees and the residents of the City and County. Denial of the requested injunction will cause, and continue to cause, the great and irreparable harm described herein, and which PLAINTIFFS are able to establish. The Legislative Analyst of the City and County of San Francisco determined in a report issued on September 17, 2013, that CCSF brings a $300 million

economic benefit to San Francisco every year, and that local community colleges lack capacity to take on CCSF's students. Unless DEFENDANTS are enjoined, PLAINTIFFS and those they represent, and the residents of the City and County of San Francisco, will be without a local community college. PLAINTIFFS, those they represent, the residents of San Francisco and the CCSF students, will face a continuing loss of educational opportunities to which they are entitled under California law, and severe damage or destruction of their educational opportunities.

5. Conversely, DEFENDANT'S will suffer no harm, or negligible harm to legitimate interests, if the injunction is granted, because DEFENDANT'S are pursuing unlawful and unfair business practices, and DEFENDANT'S do not stand to lose any money, property, or status, nor incur any costs, from issuance of the injunction.

6. There is a strong public interest in injunctive relief, given the millions of dollars in harm, and the loss of educational opportunities, that disaccreditation will bring.

7. Hence, PLAINTIFFS will suffer greater injury from denial of the injunction than DEFENDANTS are likely to suffer if it is granted.

8. In view of its unlawful and unfair business practices, AFT 2121 and CFT have asked ACCJC to rescind its Show Cause and Disaccreditation actions, to no avail. ACCJC has refused to rectify its violations of law, despite the August 13, 2013 letter from the US Department of Education, which examined the ACCJC's conduct and determined that the ACCJC had violated Federal regulations in regard to four of the issues that PLAINTIFFS present in this complaint.

9. ACCJC's unfair and unlawful business practices, alleged herein, provide just and sufficient grounds, both individually and collectively, for this Court, to issue a preliminary injunction and a permanent injunction according to proof, restraining ACCJC from giving force and effect to its Show Cause and Disaccreditation decisions, and restoring the *status quo ante*, recognizing CCSF as fully accredited, and thereafter allowing ACCJC to evaluate CCSF only in accordance with fair and legitimate Standards, Requirements, policies and procedures that are in conformity with the requirements of State and Federal laws and regulations.

PRAYER FOR RELIEF

The PLAINTIFFS pray that the Court:

1. Order the ACCJC to restore the *status quo ante* its unlawful and unfair actions towards CCSF by vacating and rescinding the improper Show Cause and Disaccreditation decisions against CCSF, and restoring CCSF's accreditation, subject to future reviews that are conducted in accordance with California law, legitimate ACCJC policies and Federal regulations;

2. Enjoin the ACCJC from engaging in accreditation evaluations of CCSF, and any of California's 112 community colleges in a manner that violates applicable federal or state law, or any of its own legal policies and procedures;

3. Order ACCJC to rescind, and cease giving force and effect to its Standards, elements of Standards, policies and procedures which constitute unlawful or unfair business practices;

4. Order the recusal from evaluation or actions involving CCSF, of ACCJC officers, agents, putative team members, and representatives who participated in the unfair and unlawful business practices proven in this case, including but not limited to Barbara Beno, Sherrill Amador, Frank Gornick, Steven Kinsella, John Nixon, Norval Wellsfry, Krista Johns, and Garmon Jack Pond; and anyone affiliated with (i) the CCLC JPA trust from 2006 onwards and (ii) anyone involved in advocating directly, or indirectly through another entity, for the Student Success Task Force or as a member or participant with a trade or other association pursuing matters involving CCSF; and for anyone else involved in an actual or apparent conflict of interest involving CCSF.

5. Order the ACCJC to pay the costs of suit;

6. Order ACCJC to pay attorneys fees pursuant to Motion, in accordance with California's private attorney general statute, Code of Civil Procedure section 1021.5.

7. Provide such other and further and additional relief as is just and proper.

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Dated: September 23, 2013

Respectfully submitted,

LAW OFFICES OF ROBERT J. BEZEMEK
A Professional Corporation

By: ______________________________
ROBERT J. BEZEMEK
LAW OFFICES OF ROBERT J. BEZEMEK, P.C.
Attorneys for Plaintiffs

1. Order the ACCJC to restore the *status quo ante* its unlawful and unfair actions towards CCSF by vacating and rescinding the improper Show Cause and Disaccreditation decisions against CCSF, and restoring CCSF's accreditation, subject to future reviews that are conducted in accordance with California law, legitimate ACCJC policies and Federal regulations;

2. Enjoin the ACCJC from engaging in accreditation evaluations of CCSF, and any of California's 112 community colleges in a manner that violates applicable federal or state law, or any of its own <u>legal</u> policies and procedures;

3. Order ACCJC to rescind, and cease giving force and effect to its Standards, elements of Standards, policies and procedures which constitute unlawful or unfair business practices;

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Dated: September 23, 2013

Respectfully submitted,

LAW OFFICES OF ROBERT J. BEZEMEK
A Professional Corporation

By: Robert J. Bezemek

ROBERT J. BEZEMEK
LAW OFFICES OF ROBERT J. BEZEMEK, P.C.
Attorneys for Plaintiffs

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

August 13, 2013

Barbara A. Beno, Ph.D.
President
Western Association of Schools and Colleges,
Accrediting Commission for Community and Junior Colleges
10 Commercial Boulevard, Suite 204
Novato, California 94949

Dear Dr. Beno:

As you are aware, the Accreditation Group in the Office of Postsecondary Education (Accreditation Group or Department) received a complaint from the California Federation of Teachers (CFT), as well as other interested parties, about the Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (ACCJC, the Commission or the agency). In addition to that complaint, the Accreditation Group also received complaints from other interested parties[1], which included similar concerns. The Department has concluded its review of those complaints.

As a part of its evaluation, the Department reviewed the allegations raised in the complaints of the CFT and the others for applicability to the Secretary's Criteria for Recognition and requested that your agency respond to the allegations regarding your agency's accreditation review process and decision concerning City College of San Francisco (CCSF or the institution). The agency provided a written response and also directed the Department to review information and materials already submitted in the agency's petition for recognition. The Department then reviewed all of the documentation for demonstrated compliance with the Secretary's Criteria for Recognition.

Based on a review of the information and documentation, the Accreditation Group has found that some aspects of the agency's accreditation review process do not meet the Secretary's Criteria for Recognition. Specifically, the Accreditation Group has determined that the ACCJC is out of compliance with 34 C.F.R. §§602.15(a)(3), 602.15 (a)(6), 602.18(e), and 602.20(a) of the Secretary's Criteria for Recognition, as described below:

1. The agency does not have a specific policy on the composition of on-site evaluation teams. The agency's "Policy on Commission Good Practice in Relations with Member Institutions" states that it will "include educators, academics, administrators and members of the public on evaluation teams." And, the agency's "Team Evaluator Manual" states that "Typically, a team has several faculty members, academic and student services

[1] The other interested parties are listed in the cc: section of the letter.

Exhibit 1

administrators, a chief executive officer, a trustee, a business officer, and individuals with expertise and/or experience in learning resources, distance/correspondence education, planning, research, evaluation, and baccalaureate programs."

The agency provided in its response the composition of the two teams that evaluated CCSF in March 2012 and April 2013, both of which included a large number of administrators in comparison to the number of faculty members. In its petition, the agency provided the suggested standard evaluation assignments based on job title, as well as sample evaluation team rosters. This information does not specifically require nor demonstrate adequate representation of both academic and administrative personnel on evaluation teams, nor does it evidence the agency's following its statement in its Team Evaluator Manual that it typically includes several faculty members on a team. In addition, the agency does not state in any materials that agency staff could or would serve on an evaluation team; however an ACCJC staff member was listed as a member of the team for the April 2013 evaluation of CCSF.

Section 602.15(a)(3) of the Secretary's Criteria for Recognition requires that if an agency accredits institutions, as the ACCJC does, then it must have academic and administrative personnel on its evaluation, policy, and decision-making bodies. The criterion expects a good faith effort by the agency to have both academic and administrative personnel reasonably represented. One academician on an evaluation team comprised of eight and 16 individuals, as was the case for the April 2013 and March 2012 evaluation teams, respectively, of CCSF, is not reasonable representation. The agency must demonstrate that it ensures that both academic and administrative personnel are adequately represented on its evaluation teams.

2. The agency's "Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Commission Representatives" states that one purpose of the policy is to minimize relationships that might bias deliberation, decisions or action.

   The agency stated that there is no commonly-accepted rule within the accreditation community, nor the higher education community-at-large, that would disqualify an individual's participation on an evaluation team because his/her spouse was employed by the accrediting agency. In addition, the agency also stated that this conflict would only exist if there was an avenue for either spouse to exploit the situation for personal or professional financial gain, or if in opposing roles within the process. However, the existence of a conflict of interest, or the appearance of a conflict, cannot be determined without considering the specific factual situation. Here, the team member is the spouse of the president of ACCJC, and the president regularly represents the Commission in a wide variety of capacities. And, there does not have to be an opportunity for financial gain by an individual for there to be the appearance of a conflict of interest.

   Section 602.15(a)(6) of the Secretary's Criteria for Recognition requires not just clear and effective controls against conflicts of interest, but also against the appearance of conflicts of interest. The appearance of a conflict of interest is present if there is a potential for the personal interests of an individual to clash with fiduciary duties. Personal interest includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favors for family and friends. Even knowing the complex structure of the ACCJC's accreditation process and that accreditation decisions are made by the Commission, the participation of the spouse of the president of the ACCJC on an evaluation team has the appearance to the public of creating a conflict of interest (i.e., an appearance of bias of the Commission in favor of the team's position over that of the institution's). Therefore, the Accreditation Group determined that this practice precludes us from determining that the ACCJC has clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, as required. The agency must demonstrate that it has clear and effective controls against conflicts of interest, and the appearance of conflicts of interest.

3. The agency's "Policy on Commission Actions on Institutions" states that the action to reaffirm accreditation includes recommendations that "are directed toward strengthening the institution, not correcting situations where the institution fails to meet the Eligibility Requirements, Accreditation Standards and Commission policies." The action to reaffirm with a follow-up report is made when an institution "has recommendations on a small number of issues of some urgency which, if not addressed immediately, may threaten the ability of the institution to continue to meet the Eligibility Requirements, Accreditation Standards and Commission policies."

   The agency stated in its response that it has two types of recommendations – "to meet the standard" or "to increase institutional effectiveness," as also noted in the policy excerpts above. What is not clear is how the recommendations are differentiated between those two types and how an institution, an evaluation team, the Commission, or the public is to know the difference.

   In the Executive Committee report of the agency's own review of the CFT complaint, the agency states the following:

   > It is accurate that the 2006 Report found that the institution met sufficient numbers of standards to have its accreditation reaffirmed. However, the 2006 report also included eight "major recommendations." When the Commission met and considered the 2006 Report at its Commission Meeting on June 7-9, 2006, it considered two of the "recommendations" to be serious enough to require that the institution take corrective action and provide the Commission with a Progress Report.

   And, later in the same section of the report:

   > The Evaluation Report (the "2012 Report") of the team that visited the institution in March of 2012 documented that, between 2006 and 2012, the situation at CCSF had deteriorated dramatically, and many of the areas which were noted only as "recommendations" in the 2006 Report had deteriorated to the extent that they

had become serious deficiencies in 2012.

This summary alone reflects the difficulty to ascertain what a recommendation represents – an area of noncompliance or an area for improvement.

Section 602.18(e) of the Secretary's Criteria for Recognition requires that the agency provide the institution with a detailed written report that clearly identifies any deficiencies in the institution's compliance with the agency's standards. By using the term recommendation to mean both noncompliance with standards and areas for improvement, the agency does not meet the regulatory requirement to provide a detailed written report that clearly identifies any deficiencies in the institution's compliance with the agency's standards. This lack of clear identification impacts the agency's ability to provide institutions with adequate due process. The agency must demonstrate that it provides a detailed written report that clearly identifies any deficiencies.

4. As previously stated, the agency uses the term "recommendation" to mean an institution has a deficiency in meeting at least one of the agency's standards, or the institution meets the standard but could use additional effort or improvement in this area. Within the agency's "Policy on Commission Actions on Institutions," it states that the action to reaffirm with a follow-up report includes recommendations and the Commission expects the resolution of those recommendations within two years. As the Commission expects the resolution of the recommendations, the use of the term recommendation in this instance is assumed to mean noncompliance with a standard.

   Section 602.20(a) of the Secretary's Criteria for Recognition requires that if an agency's review of an institution under any standard indicates that the institution is not in compliance with that standard, the agency must initiate an adverse action or provide a timeframe of no more than two years for the institution to bring itself into compliance. The Commission noted this specific requirement and recited the correct interpretation of the regulation in its response. However, it appears that the Commission continues to implement the required enforcement timeframe only after the agency has imposed a sanction on an institution.

   Specifically, the agency's "Policy on Commission Actions on Institutions" states that if an institution cannot demonstrate that it meets the agency's standards, then it will be placed on sanction and will have two years to come back into compliance. This policy language indicates that only once an institution is placed on an agency-defined sanction is a deficiency required to be remedied within the enforcement timeline, whereas the regulation has no such limiting language for an area of non-compliance.

   In its response, the agency states that the recommendations included in the 2006 Commission action letter to CCSF to reaffirm the institution's accreditation and require a follow-up report needed to be resolved within a limited timeframe. As excerpted above, the Commission considered two of the recommendations "serious enough" to require interim reports (a progress report in 2007, a focused midterm report in 2009, and a follow-up report in 2010). And, the agency stated in the 2012 Commission action letter to CCSF that part of the reason for the show cause order was the failure of the institution to correct areas of noncompliance cited in 2006. The agency cannot treat an issue serious enough to require reporting and to be part of the rationale for a show cause order, but not serious enough to enforce the timeframe to return to compliance, as required by federal regulation.

The Commission has not demonstrated appropriate implementation of this regulation. Allowing an institution to be out-of-compliance with any standard for more than two years is not permissible within §602.20(a) of the Secretary's Criteria for Recognition. The agency must demonstrate that it initiates an adverse action[2] or provides a timeframe of no more than two years for an institution to bring itself into compliance if an agency's review of an institution under any standard indicates that the institution is not in compliance with that standard. At the end of that two-year period, the agency is obliged to take an adverse action if the institution remains out of compliance with the standard.

The Department finds that ACCJC does not meet the requirements of the sections cited above. Section 496(*l*) of the Higher Education Action of 1965, as amended, 20 U.S.C. §1099(b)(l), requires the Department to initiate adverse action when it determines that a recognized accrediting agency fails to meet the Criteria for Recognition. Alternatively, the Department may allow the accrediting agency a limited timeframe, not to exceed 12 months, to come into compliance. Therefore, we have determined that in order to avoid initiation of an action to limit, suspend or terminate ACCJC's recognition, ACCJC must take immediate steps to correct the areas of non-compliance identified in this letter. Please provide your response to the specific sections in this letter, within your response to the draft staff analysis of the agency's petition for recognition to the Accreditation Group.

The Department noted other issues raised in the complaints submitted and considered those in the course of its review. To the extent issues identified by the staff from the complaints have not been discussed above, they are issues which the staff concluded were either not related to the Secretary's Criteria for Recognition or were found to be compliant with the Secretary's Criteria for Recognition within the context of this review. As the agency has submitted a petition for recognition to the Department, a complete review of all sections of the Secretary's Criteria for Recognition will be conducted in that context and it is possible that areas of non-compliance could be found that were touched on in the complaints but not identified as such by the staff in reviewing the complaints.

[2] The Secretary's Criteria for Recognition define "adverse action" as denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

If you have any questions regarding this letter's content, please contact Elizabeth Daggett, by phone at 202-502-7571 or email at Elizabeth.Daggett@ed.gov. Thank you for your cooperation in this matter.

Sincerely,

Kay W. Gilcher, Director
Accreditation Group

Cc: Mr. Robert J. Bezemek,
Counsel for Third Parties and Complainants
California Federation of Teachers
AFT Local 2121
Additional complainants not listed individually

Mr. Alvin Ja

Mr. Paul Harvell

Ms. Wendy Kaufmyn

Mr. Rick Baum

Mr. Martin Hittelman

Mr. Thomas Brown

Mr. Rick Sterling

Funding retiree health benefits—

A new financial challenge facing California community college districts

A Special Report to Trustees and Chief Executive Officers

COMMUNITY COLLEGE LEAGUE OF CALIFORNIA

By Steve Kinsella, John Rodgers and Diane Woodruff

The health care crisis we've heard so much about in America will soon hit California community college districts where it hurts most—our pocketbooks. New accounting standards will soon require districts to conduct actuarial studies to identify the extent of their unfunded liability for retiree health benefits and then to either begin funding that liability or subtracting a portion of the unfunded liability from their general fund's bottom line.

While these new accounting standards don't take affect until 2007, the prudent time for trustees and CEOs to act is now.

Many of us have known for years that this unfunded liability exists. Why the sudden attention to this issue? During the 1990s, private industry grabbed unwanted headlines across the country when many pension funds went bankrupt due to multi-billion dollar unfunded liabilities. The accounting industry in America responded to the crisis by forcing the private sector to accrue its pension liabilities on its financial books.

Now the accounting industry is taking aim at the public sector. Two years ago, the Governmental Accounting Standards Board (GASB), which establishes standards for financial accounting and reporting for state and local government across the country, reached the conclusion that many public agencies were facing a similar crisis regarding unfunded retiree health benefits. GASB decided to force local governments to disclose the total cost of compensation, including compensation owed in the future as retiree health insurance, as an expense on their annual financial statements. (Current accounting standards require the liability only be noted by your auditor in the footnotes of your annual audit.)

"The size of retiree health benefit liabilities is so large that unless steps are soon taken to address the issue, it seems likely that districts will eventually seek financial assistance from the state," reported the California Legislative Analysts Office. In an August 5, 2005 news story headlined, "Public Agencies Face Healthcare Cost Crisis," the *Los Angeles Times* wrote, "Cities, counties, school districts and state agencies across California face rapidly growing bills for retiree health benefits, but most have done little to get ready to pay them. The required payments threaten to put heavy financial pressure on governments that granted generous benefits in the past and now are beginning to see the bills come due."

To make this complex topic as easy to understand as possible, let us give you a real example of how these new accounting standards will impact one of our districts. Let's call it *California District*. Currently, *California District* provides its employees with fully-paid insurance coverage until age 65, when they must go on Medicare. At that point, the district pays a stipend for their Medicare supplement. From its general fund, it pays $3.9 million annually to cover the health benefit costs of retired employees. (This is commonly known as the "pay as you go" approach and is the funding approach used by most districts.)

The requirements of GASB 45 concerning the reporting of retiree health benefits liabilities are in alignment with current Commission standards and practices. Current standards state specifically that governing boards are responsible for the fiscal health of the colleges they govern.

Accreditation Commission

California District recently conducted an actuarial study and found they have an unfunded "past service liability" of $59.2 million. That means, in short, the district has promised to pay both retirees and current employees nearly $60 million in health benefits over the next several years. *California District*, however, has only $1.5 million set aside for those future benefits

The new accounting standard —called GASB 45—will require *California District* to pay approximately $5.2 million annually, beginning in 2007-8, towards its multi-million dollar liability or, if it can't pay, accrue that amount as a liability on its annual financial statement.

As trustees and chief executive officers, we know that health care costs have risen rapidly since the mid 1990s, with double-digit growth rates in some years.

Continued on page two

About the authors—Steven Kinsella, left, is Superintendent/President of Gavilan CCD. He is chair of the Community College League's Retiree Health Benefit JPA and is a former chief business officer at West Valley-Mission CCD and Monterey Peninsula CCD. John Rodgers, right, a 10 year member of the Kern CCD Board of Trustees, is chair of the JPA's Investment Committee. He is a professional financial planner in Bakersfield. Diane Woodruff is Interim Chief Executive Officer of the Community College League. She is the former Superintendent/President of Napa Valley CCD.

Exhibit 2

A Statement regarding GASB 45 from the Accrediting Commission

The requirements of GASB 45 concerning the reporting of retiree health benefits liabilities are in alignment with current Commission standards and practices. Current standards state specifically that governing boards are responsible for the fiscal health of the colleges they govern.

The Commission's standards IV D.1 and 2 require that an institution's financial resources be sufficient to support its mission, and that institutional financial plans identify and make provision for liabilities. These requirements include the following: "When making short-range financial plans, the institution considers its long-range financial priorities to assure financial stability. The institution clearly identifies and plans for payment of liabilities and future obligations."

In the past several years, the Commission has cited unfunded liabilities associated with retirement and other benefits as a factor in evaluation of institutional financial stability and management quality, and required institutions to identify the amount of and make plans to pay unfunded liabilities. Governing board efforts to address GASB 45 will likely bring more institutions into alignment with existing accreditation standards, but will also challenge institutions to implement strategies to ensure long term fiscal stability.

Barbara A. Beno, *President*, August 2005

Funding Retiree Health Benefits **Continued from page one**

The pace of future health care costs growth is projected to outstrip general inflation rates by three to five percent over the next several years. Plus, there will be a growing number of retirees as the Baby Boomer generation hits 60 years old.

Many of our districts provide health benefits for retirees that cover most doctor and hospital bills until the retiree becomes eligible for Medicare. For those already eligible for Medicare, district-funded plans often fill gaps in coverage, particularly the cost of prescription drugs, which, as you know, has escalated rapidly.

GASB 45 will require our districts, beginning in 2007 for the largest districts, to treat the obligation not as a year-to-year pay-as-you-go cash obligation, but on an accrual basis. Accrual accounting for retiree health benefits means districts will book the liability as an expense directly on the bottom line of their balance sheet. (Currently the liability is a footnote in your annual audit.)

And how is a district's annual liability calculated? It's a complex formula but here are the basic elements: The first is the cost of future benefits earned by current employees. In other words, every day that Jane Doe works for you, she earns X number of dollars in future benefits. The second element is the cost of your district's unfunded "past service" liability. If your district hasn't set aside funds for the future benefits Jane Doe earned in the past, this dollar value becomes part of the calculation. The good news is that GASB is giving local agencies 30 years to amortize the unfunded liability. They don't expect you to come up with the cash all at once.

The new accounting standards will become effective in fiscal year 2007-08 for districts with revenues of $100 million or more in 1998-99, in fiscal year 2008-09 for districts with revenues between $10 million and $100 million, and in fiscal year 2009-10 for districts with revenues of less than $10 million.

To have the unfunded liability removed from their balance sheets, districts are required to commit funds irrevocably to a trust fund, the type being developed by the Community College League's new Retiree Health Benefit JPA (See page three). If the

Continued on page four

BY THE NUMBERS

\# of districts that pay retiree medical benefits
66 out of 72

Estimated liability for all districts
$2.5 billion

Percent of $2.5 billion liability currently set aside by districts
15%

Warnings from Credit Rating Agencies

"In some instances, the new reporting (GASB 45) may reveal cases in which the actuarial funding of (retiree health benefits) would seriously strain operations, or, further, may uncover conditions under which employers are unable or unwilling to fulfill these obligations. In such cases, (retiree health benefits) may adversely affect the employers creditworthiness."

Standard & Poor's Ratings Services
December, 2004

"Fitch's credit focus will be on understanding each issuer's liability and its plans for addressing it. Fitch also will review an entity's reasoning in developing its plan. An absence of action taken to fund (retiree health benefit) liabilities or otherwise manage them will be viewed as a negative rating factor."

FitchRatings
Public Finance
June, 2005

How the League's new JPA can help

By Ray Giles, Community College League

Seventeen districts joined together this year to form a joint powers agency (JPA) to help California community colleges address the fiscal challenges posed by GASB 45 and the estimated $2.5 billion in unfunded liabilities faced by the districts.

The new JPA – officially known as the Retiree Health Benefit Program JPA -- will provide participating districts with three primary services:

1) the actuarial services required to properly calculate each district's accumulated liability and the annual required contribution to fund the liability,
2) a trust that will allow districts to contribute toward the liability and eliminate the liability on their balance sheets, and
3) a pooled investment program for accumulated benefit funds. Each participating district will continue its own benefits plan but will be deposit with the JPA the amount of its annual retiree health benefit cost and withdraw funds as needed to pay the costs of retiree health benefits.

One of the primary benefits of the JPA Trust is its legal ability to invest in a long-term portfolio of diversified investments and therefore increase the rate of return on those savings and, thereby, reduce costs to participating districts. Funds accumulated outside an irrevocable trust are limited to general government investments, which are typically shorter in duration and lower in yield.

Another benefit is that all contributions to the JPA Trust by a district serve to reduce or eliminate the district's unfunded liability reported on its annual financial statement. Putting district funds in the county treasury will not reduce the liability reported by a district's auditor.

Steven Kinsella, Superintendent/President of Gavilan CCD, is the chair of the JPA. Larry Serot, Vice President, Administrative Services, Glendale CCD, is the vice chair. John

Rodgers, a ten-year member of the board of trustees of the Kern CCD is the chair of the Investment Committee. The vice chair is Mike Brandy, vice chancellor, business services, Foothill-DeAnza CCD.

Kinsella says, "Through the new JPA, we have an opportunity as a system to help districts find solutions to this challenge. It will be important as we move forward for trustees, chief executive officers and chief business officers to work together to ensure the districts respond in a fiscally prudent manner to this difficult challenge. This JPA, which has been developed by the districts with assistance of legal and financial experts, is a cost-effective opportunity for districts to take that important step."

For additional information on the JPA, including the list of actuarial firms recommended by the League and the investment options provided by the JPA for funds dedicated to reducing your district's long-term liability, go to: www.ccleague.org/special/retireehlth.asp

The Big Question for Trustees and CEOs

"How can we set more money aside for retiree health benefits when we are so grossly underfunded for academic programs and services and when our current employees and their unions want to spend all extra available funds on salaries and benefits for current employees?"

The difficulty of finding the funds necessary to meet this long-term obligation cannot be overstated. Roy Romer, the superintendent of the Los Angeles Unified School District, told the *Los Angeles Times*, "There is a reality that unions are going to have to face that you can't continue to deliver a benefit that you haven't paid for or that you haven't funded. I think that that fact will cause us all to come to the table and to

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Special workshop for trustees, CEOs and CBOs

Steve Kinsella and John Rodgers will present more information on GASB 45 and the new JPA at the Community College League's Annual Convention at the San Francisco Airport Marriott. The session, "A statewide solution to retire health benefit crisis," will begin 9:45 am on Friday, November 18.

"The League's program provides a responsible and safe way to help solve one of the biggest problems facing districts today. I urge all CEOs to consider the many benefits of joining this JPA."

Diane Woodruff
Interim Chief Executive Officer
Community College League

The Big Question for Trustees and CEOs

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find a solution."

Employee groups fear that funding the future liability will mean less money available now for current salary and benefits. Union leaders argue, "GASB 45 is only a reporting requirement, not a funding requirement." They've also said, "Yes, the obligation will grow but so will our funding."

Both are true. While funding is not mandatory, the implications of avoiding planning to fund the liability are definitely real, as the statements on Page Two of this report from the Accrediting Commission and the credit rating companies makes clear. And, yes, our funding will increase but, as actuarial studies also have made clear, not nearly as fast as the growth in health care costs.

There are two practical but difficult solutions. The first is mitigating future increased liabilities by re-negotiating collective bargaining agreements. Several districts have reduced liabilities by reducing or eliminating retiree benefits for new employees. The second option is to fund the liability using creative strategies. Currently, one district is making a lease payment on a piece of property and has decided to sell the property. By diverting the budget lease payments to a retiree health benefit they will not increase their overall budget expenditures.

Kern CCD Trustee John Rodgers, who has been a professional financial advisor for more than 25 years, believes funding the liability is akin to prudent retirement planning. "As with our personal retirement planning, the sooner our districts begin to fund this liability the better they will be prepared to meet their obligations. Funding it now rather than later will also cost districts much less since it's always less expensive if you start setting aside funds early and benefit from prudent, long-term investing."

Policy questions for Boards of Trustees

- What is the responsibility and liability of boards of trustees regarding retiree health benefits?
- What options does the district have for meeting those long-term liabilities?
- How will current and future employee contract negotiations impact the district's health benefit liability?
- How do we currently fund our retiree health benefit program? Pay-as-you-go or by the accrual method?
- Do we have an up-to-date actuarial valuation for retiree health benefits?
- What is the dollar difference between our retiree health benefit reserves and our liability?
- If we are not fully funding our liability, what is our plan to achieve that goal?
- What will be the impact of funding our liability on other planned and needed expenditures?
- What are the benefits and risks of not funding the liability as recommended by some employee groups?
- What are the benefits and risks of putting funds into an irrevocable trust, given that we won't have that money available to us in emergencies?
- How can the board support the goal of fully funding our liability?
- How can we ensure that information about this issue is communicated to employees and the general public, to assure them that public funds are being spent wisely and well?
- How would joining the Community College League's JPA benefit the district? What are other viable approaches?

By Ray Giles and Cindra Smith

Funding Retiree Health Benefits

Continued from page two

district is able to commit its annual liability payments to such an irrevocable trust, the district will simply have a current year expense and no liability on their books.

However, if the district does not pay the expense into an irrevocable trust, the annual required contribution will be accrued as a liability on your district's bottom line, with the liability growing each year. Since nearly all districts have some past service liability to amortize, simply continuing with pay-as-you-go funding will most likely result in a rising net liability.

The possible consequences of delaying either funding the liability or taking steps to manage the liability include:
Audit Fitch Ratings, one of the nation's largest rating firms, points out in a special report to local governments, failure to comply with GASB 45 "would prevent auditors from releasing a 'clean' audit opinion."
Credit Negative audit reports could impact the ability of districts to borrow funds or issue bonds at advantageous rates. See *Standard & Poor's* warning on page two.
Accreditation The Accrediting Commission, in a statement on page two of this report, states that districts are required "to identify the amount of and make plans to pay unfunded liabilities."

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ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES
Western Association of Schools and Colleges

Policy on Closing an Institution

(Adopted June 2004; Revised January 2011; Edited June 2012)

Background

A decision to close an educational institution is a serious one that requires thoughtful planning and careful consultation with all affected constituencies. Every effort should be devoted to informing each constituency, as fully and as early as possible, about the conditions requiring consideration of a decision of such importance.

Additionally, most institutions of higher education are entities established under the provisions of state or national law, and as such may have legal responsibilities (holding title to real property, for example) that may necessitate the continued existence of the organization after the educational activities of the institution have been terminated. In most cases an organization's existence and educational activities will not be terminated simultaneously. This policy makes only incidental reference to such organization responsibilities and always in the educational context. It is imperative that a governing board considering closing an institution under its care should be guided not only by the following policy and by the state or appropriate authorizing education authorities, but also by advice of legal counsel.

Before closing, the governing board should consider carefully such alternatives as merging with another institution, forming a consortium, or participating in extensive inter-institutional sharing and cooperation. As much as possible, the determination to close an institution should involve a consultative process, but responsibility for the final decision to close rests with the governing board.

The decision to close requires specific plans for appropriate provisions for students, faculty and staff and for the disposition of the institution's assets. Failure to plan adequately will increase the inevitable distress to students, faculty, and staff.

Policy

This policy complies with 34 C.F.R. § 602.24 and the Higher Education Act § 496(c)(3) as amended by the Higher Education Opportunity Act (2008).

Before closing an institution, a governing board must fully inform all affected constituents of the potential closure as early as possible, and provide for student completion of programs and the securing of student records. Institutions must develop a Teach-Out Plan and submit it to the Commission for action when the institution, which is closing, provides one hundred percent of instruction in at least one degree program.

Institutions which develop a Teach-Out Plan that involves another institution at which the students will complete their program shall only be approved by the Commission if (1) the agreement is between institutions that are accredited or pre-accredited by a federally recognized accrediting agency, (2) is consistent with applicable standards and regulations, and (3) provides for the equitable treatment of students.

Exhibit 3

An institution considering closure must address the following elements, each of which is discussed in more detail below:

- Student completion;
- Disposition of academic records and financial aid transcripts;
- Provisions for faculty and staff;
- Disposition of assets;
- Obligations to creditors;
- Coordination with the Accrediting Commission for Community and Junior Colleges;
- Key governing board obligations.

Policy Elements

A. Student Completion

Institutions considering closing must provide for the academic needs of students who have not completed their degrees and educational programs. Arrangements for transfer to other institutions will require complete academic records and all other related information gathered in dossiers which can be transmitted promptly to receiving institutions. Agreements made with other institutions to receive transferring students and to accept their records must be submitted to the Accrediting Commission for Community and Junior Colleges (ACCJC) for approval. Where financial aid is concerned, particularly federal or state grants, arrangements must be made with the appropriate agencies to transfer the grants to the receiving institutions. In cases where students have held institutional scholarships or grants and there are available funds that can legally be used to support students while completing degrees and educational programs at other institutions, appropriate agreements must be negotiated. Where such arrangements cannot be completed, students must be fully informed. Institutions considering closing must use as their guide the equitable treatment of students by providing for the educational needs of students who have not completed their degrees and educational programs.

When a student has completed 75% of an academic degree and educational program in the closing institution and chooses to continue at another institution, arrangements shall be made to permit that student to complete the requirements for a degree and educational program elsewhere, but to receive the degree and educational program from the closed institution. The receiving institution must provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the institution that is closing. Such arrangements should also include provision for continuation of the institution's accreditation by the Commission for this purpose only. These steps normally require the institution to continue as a legal organization for 12 to 18 months beyond the closing date, but any such arrangements must be established in careful consultation with the appropriate authorities and with their written consent. The institution that is closing must demonstrate that it shall remain stable, carry out its mission, meet all obligations to existing students, and demonstrate that it can provide students access to the programs and services without requiring them to move or travel substantial distances. The institution must provide students information about additional charges and costs, if any.

B. Disposition of Academic Records and Financial Aid Transcripts

All academic records, financial aid information, and other records must be prepared for permanent filing, including electronic filing. Arrangements must be made with another college or university or with the state archives to preserve the records. Notification must be sent to every current and past student indicating where the records are being stored and what the accessibility to those records will be. Where possible, a copy of a student's record should also be forwarded to the individual student. The Commission must be notified of the location where student permanent records will be stored.

C. Provisions for Faculty and Staff

The institution must arrange for continuation of those faculty and staff who will be necessary for the completion of the institution's work up to and after the closing date. It should be understood that the institution can make no guarantees, but genuinely good faith efforts to assist faculty and staff in finding alternative employment should be made. In the event that faculty or staff members find new positions, early resignations should be accepted.

D. Disposition of Assets

Determinations must be made to allocate whatever financial resources and assets remain after the basic needs of current students, faculty, and staff are provided. Institutional assets must be used in ways that would honor the intentions of the original providers. When the financial resources of the institution are inadequate to honor commitments, including those to the Accrediting Commission, the governing board shall investigate what alternatives and protection are available under applicable bankruptcy laws before deciding to close. If funds are insufficient to maintain normal operations through the end of the closing process, the institution should consider the possibility of soliciting one-time gifts and donations to assist in fulfilling its final obligations.

In the case of a not-for-profit institution, state or national laws regarding the disposition of funds and institutional assets must be meticulously followed. Arrangements for the sale of the physical plant, equipment, the library, special collections, art, or other funds must be explored with legal counsel. In the case of wills, endowments, or special grants, the institution must discuss with the donors, grantors, executors of estates, and other providers of special funds arrangements to accommodate their wishes.

E. Obligations to Creditors

The institution must establish a clear understanding with its creditors and all other agencies involved with its activities to assure that their claims and interests will be properly processed. Insofar as possible, the institution shall assure that its final arrangements will not be subject to later legal proceedings which might jeopardize the records or status of its students or faculty. All concerned federal, national and state agencies need to be apprised of the institution's situation, and any obligations relating to estate or governmental funds need to be cleared with the appropriate agencies.

Every effort shall be made to develop publicly defensible policies for dividing the resources equitably among those with claims against the institution. One of the best ways of achieving this goal is to involve potential claimants in the process of developing the policies. Time and effort devoted to carrying the process to a judicious conclusion may considerably reduce the likelihood of lawsuits or other forms of confrontation.

It is impossible to anticipate in advance the many claims that might be made against remaining resources of an institution, but the following three principles may help to identify and prioritize possible claims and to set priorities:

1. Students have the right to expect basic minimal services during the final term, not only in the academic division, but also in the business office, financial aid office, registrar's office, counseling, and other essential support services. Staff must be retained long enough to provide these services. It may be appropriate to offer special incentives to keep key personnel present.
2. Reasonable notice must be given to all employees, explaining the possibility of early termination of contracts and that the reasons for retaining some personnel longer than others are based on satisfying the minimal needs of students and the legal requirements for closing.
3. Every effort shall be made to honor long-term financial obligations (loans, debentures, etc.) even though the parties holding such claims may choose not to press them.

F. Coordination with the ACCJC

The ACCJC and specialized accrediting bodies must be consulted and kept fully apprised of developments as the plan to close an institution progresses. Arrangements must be completed with the ACCJC in advance of closure in order to assure that a legally authorized and accredited institution awards degrees. A final report on the closing must be submitted to the ACCJC for its records. The ACCJC must also be notified of the location where student records will be stored.

G. Key Governing Board Obligations

The governing board must take a formal vote to terminate the institution on a specified date. That date will depend on a number of factors including the decision to file or not to file for bankruptcy. Another key factor is whether or not all obligations to students will have been satisfactorily discharged. This is particularly important if the decision is made to allow students to graduate from the institution by completing their degree requirements elsewhere. If such arrangements are made, the governing board must take the legal action necessary to permit awarding degrees after the institution otherwise ceases to function. Normally, a formal vote to award a degree is made after all requirements have been met, but it is legally possible to make arrangements for a student to complete the requirements for a degree at another institution and to receive the degree from the closed institution. These requirements must be clearly specified along with a deadline for completion. Also the governing board must identify the person or persons authorized to determine whether or not these requirements have in fact been satisfied. Arrangements must be completed with the Commission in advance in order to assure that a legally authorized and accredited institution awards degrees.