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July 1, 2013

SENT VIA FEDERAL EXPRESS AND E-MAIL TO Kay.Gilcher@ed.gov

Kay Gilcher, Director
Accreditation Division
Office of Postsecondary Education
US Department of Education
1990 K Street NW
Washington, DC 20006

Re: Amendment to Complaint of the CFT and AFT 2121, *et al.* Against the Accrediting Commission of Community and Junior Colleges for Adopting A Policy to Destroy and Shred Evidence of Commission Actions and For Other Actions

Dear Ms. Gilcher,

As you know, our law firm represents the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, and others (collectively the "CFT") in filing a Complaint on April 30, 2013, against the Accrediting Commission of Community and Junior Colleges (ACCJC). CFT filed a second complaint against ACCJC dated June 4, 2013. These complaints were submitted to both the Department of Education and ACCJC. This letter constitutes an **Amendment to the April 30th Complaint** by the same complainants.

This Amendment has two purposes:

First, it alleges new violations of Federal law (**34 CFR § 602.15**), ACCJC policies and Bylaws, and State law, owing to the ACCJC's adoption of new policies on June 7, 2013 and other actions, all of them aimed at reducing public knowledge and transparency in ACCJC matters. The most egregious of these new policies requires that the ACCJC, its staff, Commissioners, and visiting team members, in the Commission's words, "**destroy**" and "**shred**" contemporaneous documents, including emails and other electronic communications, which disclose the basis for ACCJC's accrediting decisions. (See **Attachment 1**, the Commission's new "Statement on the Process for Preserving Confidentiality of Documents Related to Institutional Evaluations.") This new policy, adopted without any public notice of its consideration, or public comment, directly involves the Complaints about its treatment of CCSF, as well as its actions involving all

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California community colleges.

Other newly adopted policies and actions severely restrict information available to the public, the California Legislature, and the Department of Education, about ACCJC activities.

Second, this Amendment **supplements** the April 30th Complaint with information that helps navigate the CFT's April 30th complaint: a table of cited authorities, searchable PDFs of the attachments, and a new index to the attachments, which includes page numbers.

I. Recent Commission Actions, Particularly Its New Policy That Requires the Commission, its Staff and Visiting Team Members to Destroy and Shred Evaluative Documents Violates 34 CFR § 602.15, Commission Bylaws, Due Process and Fair Procedure

The Commission's adoption of a broad policy to shred or destroy documents related to accreditation decisions is one of many recent actions taken by ACCJC which are aimed at restricting access to information which may reveal the Commission's violations of its policies or Federal regulations.

A. Background Information

It hardly seems coincidental that ACCJC chose this moment to precipitously adopt the most restrictive "confidentiality" and "records destruction policy" of any regional accrediting body. Adoption of the new policy is consistent with the Commission's immediate and hostile reaction to the Complaint and appears to be motivated, in part, by the CFT Complaint. This connection is indicated by the timing of the new policy, its adoption in violation of Commission policy, its sweeping terms and other actions aimed at restricting the flow of information about Commission practices.

ACCJC's Hostile Reaction to the Filing of the Complaint. When three CFT representatives politely entered the ACCJC's Novato, California office on April 30th to file the Complaint, they were greeted with hostility by the Commission's staff. Rejecting CFT's routine request for a stamped copy of the Complaint and Attachment to confirm the date and time of their submission, ACCJC staff demanded that the CFT immediately leave or else the police would be called. One member of the ACCJC staff indicated he was calling 911. The CFT representatives departed, leaving behind on the reception counter two copies of the Complaint and Attachments. ACCJC staff then locked the doors of their office and closed the shades. This is hardly the response one should expect from a public body such as the Accrediting Commission.

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ACCJC had no legitimate basis for this hostile reaction to CFT's filing of the Complaint. Because ACCJC refused to acknowledge receipt of the Complaint when it was filed, CFT submitted it electronically to both ACCJC and DOE on May 1.

ACCJC's Plan to Adopt More Confidentiality Rules. Just a week later, on May 7, ACCJC indicated, in a "tentative agenda" for its June meeting, that it intended to consider at its June meeting a new "operational policy" entitled "Statement on the Process for Preserving Confidentiality of Documents Related to Institutional Evaluations." No details of the proposed policy were provided to the public or member institutions. (As noted below, CFT did not learn the details until shortly after the ACCJC's June 7, 2013 meeting, when it was able to obtain a copy of the full agenda document distributed to the few members of the public which ACCJC allowed into the meeting.)

CFT's Legal Hold and Questions. On May 10, 2013, CFT wrote to the Commission, asking questions and requesting information in regard to several issues raised by the Complaint. The letter also advised that in accordance with Federal and State law it was notifying ACCJC it was placing a "Legal Hold" on the Commission. The Legal Hold requires the Commission to *preserve* documents related to its evaluation of CCSF. (A copy of this letter is **Attachment 2** hereto.)

ACCJC Disregards CFT's Questions and Does Not Agree to Preserve Documents - and Claims it Represents Former Team Members. On May 15 the Commission, through its lawyer Laurence Kessenick, acknowledged receipt of the May 10 Legal Hold letter. However, the Commission did not indicate that it would observe the requested "hold." ACCJC also ignored CFT's requests for information. In the same letter, ACCJC claimed that its lawyer currently represents all *former* visiting team members who participated in the evaluation of CCSF in March 2012. This last comment appears to be an effort to interfere in the ability of CFT and others to obtain information relevant to the Complaint and ACCJC actions, and to dissuade former evaluation team members from providing relevant information. (See **Attachment 3**.)

CFT Objects to ACCJC's Attempt to Silence Witnesses. On May 21 the CFT, through the undersigned, responded to ACCJC's lawyers, explaining that under California law, ACCJC does not "represent" former visiting team members. (See **Attachment 4**)

As we explained:

* A lawyer's unilateral declaration that someone is his client does not create an attorney-client relationship, where none otherwise exists. *Koo v. Rubio's Restaurants, Inc.* (2003) 109

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Cal. App. 4th 719, 730-732.

* California law holds that *former* employees of an entity are not automatically represented by legal counsel for an entity. *Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal. App. 4th 1256, 1263; *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal. App. 3d 131, 139-142. Volunteers such as are involved in college evaluations are not subject to any different standards. Volunteers, who are usually administrators or faculty *employed at other community colleges*, receive a day of training, then spend just two or three days reviewing a college, are not subject to perpetual representation by ACCJC counsel. Indeed, former volunteers who have information indicating the Commission acted in violation of law or policy in its evaluation and sanction of CCSF, may well have interests adverse to ACCJC.

* State Bar rules indicate that a corporate entity (such as ACCJC) cannot preclude opposing counsel from contacting its former employees, who may disclose unfavorable facts. As *Nalian* emphasized, a “corporation cannot bring former employees back into the fold ... merely because there is a risk that the former employees might disclose unfavorable facts... [citation].” 6 Cal. App. 4th at 1263. ACCJC counsel’s representation of ACCJC applies only to its “control group” of managers, or other current employees who may “bind” ACCJC, and “only to persons employed at the time of the communication [with opposing counsel].” See California State Bar Rule 2-100, and discussion therewith. Here, CFT and its lawyers have every right to speak with former team members, except for those who currently serve within the ACCJC control group of top managers or serve as commissioners, if any.

CFT’s May 21 letter explained in detail the legal reasons why ACCJC and its lawyers do not represent former volunteer evaluation team members. ACCJC and its lawyers have never responded to CFT’s May 21 letter.

On May 23, 2013, ACCJC Attempted to Prevent Visiting Team Members From Providing Evidence. CFT has learned that on May 23, 2013, ACCJC lawyers wrote a memo to *former* visiting team members of ACCJC who had reviewed CCSF in March 2012. The memo asserted that as ACCJC’s lawyers, *they were also the lawyers for former CCSF evaluation team members, and instructed them that they should not speak with anyone from our firm, the CFT or the press - in regard to their knowledge or opinions concerning the review and sanction of CCSF.*

The memo declared, in part:

“The purpose of this memo is to inform you that, as an evaluation team member,

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you should consider that you are at all times represented by our law firm in any issue that relates to review of and the sanction imposed on CCSF ... This assistance is provided to you at no cost. It is part of the service the ACCJC always affords evaluation team members if some legal issue arises that relates to their service to the ACCJC. We have informed the Bezemek law firm that you are represented by our law firm, and that accordingly, they may not contact you about any matter related to the CCSF matter ...”

“You may also be contacted by someone who requests information from you who is not directly associated with the Bezemek law firm, but who has some other association with CCSF. Again, please just let the person know that you are represented by legal counsel in this matter and they should contact our law firm ...”

“Finally, it is possible that you may have retained personal notes, ACCJC agendas, or copies of documents that pertain to your service related to CCSF ... These documents are not public ... but it is important to preserve them for the present. Under no circumstances, share any written materials you may have retained with any third person. If anyone requests any written materials from you that relate to the ACCJC/CCSF matter, please let me know immediately. I will advise you how you should respond ...”

“You may be contacted by someone who says they are from a news agency or some other publication. In such a case, do not discuss the matter with them but refer them to Barbara Beno at (415) 506-0234.” (**Attachment 5** hereto)

The ACCJC’s memo indicated that former team members could “opt out” of automatic representation by the ACCJC’s lawyers. While it asked that they retain any personal notes or other written materials from the CCSF review, the memo instructed,

“Under no circumstances, share any written materials you may have retained with any third person. If anyone requests any written materials from you that relate to the ACCJC/CCSF matter, please let me know immediately. *I will advise you regarding how you should respond.*” (Emphasis added. See **Attachment 5**)

This memo by ACCJC appears to be aimed at intimidating former team members into silence, and attempts to prevent them from providing information relevant to the Complaints to the CFT, its lawyers, or anyone for that matter.

The Complaint reveals that former visiting team members have knowledge of material facts relevant to proving that ACCJC violated its policies and the law in its review of CCSF. For instance, they have, may have direct knowledge and documents as to the nature and extent of Mr.

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Crabtree's involvement in the evaluation of CCSF in March 2012, and after. They also may have direct knowledge relevant to whether the evaluation team completed a signed action recommendation during its March 2012 visit to CCSF; and if not, why not.

ACCJC's actions appear to be directed at claiming the exclusive right to "control" the evidence possessed by *former* evaluation team members, *former* commissioners, and *former* Commission staff. Yet it is a well-known rule that a witness belongs to neither "side" in a dispute, that every side in a dispute has an *equal opportunity to interview witnesses*. Actions restricting access to witnesses are improper. *United States v. Cook*, 608 F. 2d 1175, 1180-1181 (9th Cir. 1979), *Reid v. Superior Court* (1997) 55 Cal. App. 4th 1326, 1333-1335. The primary exception, which applies to high-level managers of an entity or those whose statements may bind an entity- i.e. such as the current Vice Presidents of the Commission - is not the situation involved here.

There is no indication that former visiting team members have hired ACCJC's legal counsel, nor any evidence of an attorney-client relationship between ACCJC's law firm and these former team members. Given that ACCJC and its lawyers cannot mislead a former visiting team member that s/he is a client represented jointly with ACCJC (see California State Bar Rule 3-600), the memo issued on behalf of ACCJC appears to disregard the public policy of California, and hence we assert it is improper for the reasons specified in the April 30th Complaint, and a further indication of ACCJC's unreliability as an accreditor.

ACCJC Prevents Public and Press from Attending Commission Public Session on June 7.

On June 7, 2013, more than 50 members of the public sought to attend the ACCJC's public meeting, but about 30 of them were denied entry. Many were students and faculty of CCSF, and other California colleges. Although the meeting room is posted as being available, under the local Fire Code, to hold up to *200 people*, ACCJC refused to allow *more than around 20 members of the public to enter*. The number of Commission members and staff was about 30. Thus, a room for 200 was limited, by ACCJC, to about 50. ACCJC also searched each of those allowed in - forbidding possession of handbags and briefcases by those entering, in an apparent effort to prevent broadcasting or recording of the meeting. (See news story, **Attachment 6**)

ACCJC also refused to permit any members of the press and media from entering, save one student reporter. Many representatives and members of the CFT and AFT 2121, and many CCSF students and employees, were denied entry to the Commission's meeting. Had these members of the public been allowed inside, this would have increased the possibility that the Commission's actions that day - on policies never before disclosed and buried within its agenda for that day - might have been discovered and actually discussed at the meeting.

At its June 7 public session, ACCJC made available to the public its agenda binder containing

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copies of the new document shredding policy, other new policies and various reports. When the document shredding policy came before the Commission for adoption, one commissioner asked whether it applied to emails. A staff member responded that it did. Then the policy was adopted without further discussion. In other words, there was virtually no discussion of controversial policies which we challenge herein.

Shortly after the meeting, CFT discovered the policies discussed herein, including the new policy calling for destruction and shredding of ACCJC records, and personal notes and other documents in the possession of visiting team members.

ACCJC Refuses to Agree to Preserve Evidence as Required by the Legal Hold. On June 13, 2013, CFT wrote again to ACCJC, asking ACCJC - in view of the new Records Destruction Policy - to immediately indicate whether it would observe the legal hold and preserve all documents it had related to the CCSF review. (**Attachment 7**) ACCJC has not replied to this request either.

B. ACCJC New Policy For the Shredding and Destruction of Commission and Team Records Violates Federal and State Law, Including 34 CFR § 602.15 (administrative and fiscal responsibilities), and the Bylaws of the ACCJC; Other Policy Changes are Equally Restrictive of Transparency

1. The Terms of the New Document Destruction Policy Are Egregious

ACCJC's new records destruction and shredding policy impacts accreditation evaluations in several ways. **First, it calls for either destroying or shredding documents involved in the evaluation, which previously were not destroyed, or turning them over to the Commission's president when they are no longer "necessary" :**

“[a]t such time as continued possession of such documents is *no longer necessary*, **Commissioners, teams and committee members** who are in possession of such documents will be *expected either to return them to ACCJC's President ... or destroy them by having them shredded*. Commissioners, team and committee members are **not permitted to physically or electronically store or retain such documents** in their possession following their usage for the relevant institutional review. At the adjournment of Commission, team and committee meetings, the responsible ACCJC staff representative may ask that some or all of the documents pertaining to the institution be returned to the ACCJC office ...” (Emphasis added)

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The policy leaves open for interpretation when documents become “no longer necessary,” but presumably the Commission means when the team has completed its visit. In this way, the Policy provides for the destruction of “evidence” of the evaluation before the Commission has rendered a decision on the evaluated college, before any administrative challenge to the Commission’s decisions, and before a potential appeal or other legal challenge to such decisions.

Second, the new policy greatly expands the categories of information which are to be treated as “confidential,” and thus must now be destroyed. The enlarged definition includes,

“... personal notes [taken] by ... team ... members, ... [and] letters or memos to or from ACCJC affecting the institution ...” (See Attachment 1, p. 1, emphasis added)

In the case of the CCSF evaluation, such a broad definition would include documents which reveal irregularities in the evaluation process, or influence by Peter Crabtree in the evaluation process. Indeed, such documents are often the best evidence of challenged conduct. Here, for instance, the team schedule for the CCSF evaluators’ visit to CCSF disclosed the significant involvement of Peter Crabtree in the evaluation.¹

In reality, many of the documents which apparently will be considered “confidential” are routinely posted for public review at each district’s web site for accreditation, and are readily available on the web. For instance, at www.ccsf.org/accreditation, team evaluation reports, self-study documents, Commission letters and many other accreditation documents, are routinely made available to the public, as they should be. Such posting of evaluative materials is typical of every California community college² and has been typical of ACCJC’s own actions. Is ACCJC now attempting to make everything it does - except the outcome - confidential?

One member of the Commission, public member Chris Constantin, asked the question on June 7, as to whether the new policy included emails or other electronic documents. He was informed by a Commission Vice President, “yes, to be explored in the future on how to ensure destruction of

¹ ACCJC cannot, of course, retroactively impose its new restrictive policies on former team members or commissioners who served before these policies became effective. Such an *ex post facto* application would violate common law due process and California’s doctrine of common law fair procedure.

² See, e.g., <http://www.laney.edu/wp/accreditation-status/> (Laney College accreditation), http://www.arc.losrios.edu/Graduation_and_Transfer/Accreditation.htm (American River College accreditation).

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emails or electronic documents.” The policy was then adopted unanimously.

Third, the new policy attempts to prevent team members from revealing irregularities by the Commission. Henceforth, evaluation team members “may only discuss the contents of such documents with **anyone required to have the information in connection with the matter under review.**” As it says, under this new policy the former evaluation team members could not disclose irregularities, nor could they provide information about irregularities to the Complainant, their own Union, their legislators, or even the Department of Education.

ACCJC has no legal justification to attempt to restrict former evaluation team members from discussing such documents. There has been a healthy debate about the role and activities of the Commission over the last several years. Long before CFT filed the April 30th Complaint, others, such as the RP Group, the Systemwide Academic Senate, the Chancellor’s Office Accreditation Task Force, whose membership includes many former team members, have revealed information arising from ACCJC’s activities, raising questions about ACCJC’s activities. The Commission now appears to be unwilling to tolerate such discussion, and is adopting policies designed to prevent debate over its Standards, policies and procedures.

Fourth, ACCJC revised its policies to prevent discussion of its actions by its commissioners, team members and others, except for the Commission President and Chair. The newly revised “Policy on Professional and Ethical Responsibilities of Commission Members” (See **Attachment 8**) now forbids every Commissioner from discussing ACCJC functions, except for the Commission Chair (or ACCJC’s President). The Policy declares that a “Commissioner ... [r]efers all inquiries or requests for information concerning ACCJC business, member institutions, and accreditation practices to the Commission President or Commission Chair who serve as the official spokespersons for the ACCJC.

The Commission’s Policy on Conflict of Interest for Commissioners, Evaluation Team Members, etc. was also revised (in the name of avoiding conflicts of interest), to forbid team members from *commenting publicly* about “member institutions, *ACCJC business or accreditation practices.*” In other words, if one has been a team member, apparently one can no longer publicly discuss “accreditation practices” with which one disagrees, nor reveal improprieties in a review. This is unwarranted because some commissioners represent the “public” and are among those well situated to discuss accreditation policy or procedure. Now they are forbidden to discuss the Commission’s practices or business with the public they are supposed to serve.

Similarly, commissioner appointees representing the faculty or administrators, are also forbidden to discuss subjects such as accreditation practice or Commission business, with those they are

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designated to serve as representatives.

Team members come mostly from member colleges, where their service on the Commission is recognized as public service. Yet they are now forbidden to publicly discuss matters in which they have experience, such as Commission practices or business.

The ACCJC's revised policy on "Professional and Ethical Responsibilities of Commission Members" now requires commissioners to not just "accept and subscribe" to the *purposes of accreditation*, but also to the *purposes, policies and processes of ACCJC*. Further, it now includes the same enlarged definition of "confidential" documents, the shredding policy, and restrictions on discussing information about the Commission. (See June 2013 Draft, pp. 1-3)

In adopting these new policies, the Commission acted to restrict public discussion of its role, activities and responsibilities, its problems, or its future.³

2. The New Shredding Policy Was Adopted in Violation of Commission Bylaws

Notably, the Commission's new records shredding policy was adopted in violation of ACCJC's policies and bylaws. ACCJC is required to read and vote on all policies concerning institutions in its public session. Also, institutional policies must go through a process of distribution to CEOs and the public, a *first and second reading*, and an opportunity for institutional and public comment, before being approved. ACCJC completely ignored these requirements - there was no first and second reading - thus violating its own policies. And they did this by mischaracterizing the policy as being an "internal" Commission operational 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 not preserve evidence of prior evaluations for the possibility of a future appeal of an

³ This revised "ethics" Policy reiterates the same expansion of the definition of "confidential documents" set forth in the Statement on the Process of Preserving Confidentiality etc., by duplicating the words at pages 2-3 of the ethics Policy. It also requires that such documents be destroyed by shredding them or permanently deleting them. (**Attachment 8**, pp. 2-3)

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accreditation decision, or review of complaints against the Commission, is absolutely an institutional policy, as opposed to an *internal operational policy*.

Second, the new directive extends to Evaluation team members. The Commission lacks any authority to adopt operational policies concerning such activities.⁴

Third, the entire text of this new policy is an obvious extension of the Commission's "Policy on Public Disclosure and Confidentiality in the Accreditation Process" and should be contained within it. By mischaracterizing its new "Statement" as an operational policy, when it clearly falls within the jurisdiction and content of an existing *institutional policy*, the Commission once again reveals its thinly veiled attempt to avoid scrutiny and accountability for its actions. Hence, the adopting of this policy, in this manner, violates the ACCJC Bylaws, and casts more doubt on ACCJC's reliability as a regional accreditor.

3. The Commission's New Shredding Policy Violates Federal Law

The Supreme Court has recognized the "fundamental principle that 'the public ... has a right to every man's evidence' [citations omitted]," *Trammel v. United States*, 445 U.S. 40, 47-48 (1980). Consistent with this principle, a Federal regulation, **34 CFR section 602.15**, mandates that accrediting bodies must preserve the *primary evidence of their activities*:

"The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that ...

(b) The **agency maintains complete and accurate records** of--

(1) **Its last full accreditation** or preaccreditation **review of each institution or program**, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

⁴ The Commission's bylaws on passing operational policies read, "From time to time, the Commission may adopt, amend, or repeal policies that deal with the internal operation of the Commission and its staff. Action on such policies may take place at any Commission meeting, in open or closed session, and do not require two readings." [Emphasis added.]

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(2) All decisions made throughout an institution's or program's affiliation with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.” (Emphasis added)

ACCJC’s decision to require the shredding, destruction or delivery to its President, of all emails, personal notes, and other documentation (apparently including “team agendas”), which explain “all decisions” made in regard to CCSF, violates section 602.15. This is because these documents constitute an important part of the “complete and accurate” records of the review and include correspondence that is “significantly related” to ACCJC’s decisions. Yet those records apparently will no longer be preserved, and the Commission’s records will be incomplete, and potentially inaccurate.

Furthermore, the practice of destroying essential accreditation documents inhibits the Commission’s ability to fairly and completely carry out the federal requirements on due process policies contained within **34 CFR 602 section 602.25**. They also potentially adversely affect documents needed by the DOE in addressing comments or complaints related to the Commission. Additionally, any of ACCJC’s member institutions could conceivably have accreditation revoked in the future. In the event that this were to happen, the institution would be entitled to have all documents pertaining to their review reexamined.

The Department of Education requires that accrediting agencies have appeal processes in place. (See **34 CFR §602.25 (f)**) One requirement of these federally-mandated appeals procedures is that “the appeal must take place at a hearing before an appeals panel that **may not include current members of the agency’s decision-making body that took the initial adverse action.**” [emphasis added.] Because an appeals panel is required to have no prior experience with the action against the institution under review, it is essential that *all evidentiary documents*, notes, letters, reports, agendas, visitation schedules, correspondence, etc. be preserved for their independent assessment. Destroying these documents would unquestionably hinder the ability of an appeals panel or other body to give a meaningful and complete review of the prior accreditation decision. And as mentioned previously, it would virtually eliminate the possibility of an institution being able to prove misconduct in its evaluation.

Further, as shown by the April 30th Complaint, evidence contained within personal notes, emails, team visit schedules, and similar documents, may reveal violations of Federal regulations, common law due process, and California law.

Accrediting agencies are required to conform their actions to “fundamental principles of

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fairness.” *Medical Institute of Minnesota v. National Association of Trade and Technical Schools*, 817 F. 2d 1310, 1314 (8th Cir. 1987) Policies that mandate destruction of everything from personal notes to agendas to emails which are “significantly related to [the] decisions of the Commission,” or may reveal Commission improprieties violate this rule as well as **34 CFR section 602.15**.

Federal law demands that ACCJC establish to DOE’s satisfaction that it has a “reasonable basis for demonstrating that the information [it] relies on for making accrediting decisions is accurate.” (**34 CFR § 602.18(d)**) CFT has alleged that the Commission did not follow its procedures by failing to obtain a signed team action recommendation when the visiting team assembled in March 2012 to assess CCSF. The new shredding policy calls for the destruction of the very documents which are essential to establish whether ACCJC did or did not act consistently with its policy.

The Commission cannot be considered a “reliable authority” within the meaning of **34 CFR section 602.1** when it responds to criticism and legitimate complaints over its Standards, procedures and actions, by adopting policies intended to destroy and shred relevant evidence of its activities, to compel silence so that information revealing Commission improprieties is buried. The ACCJC’s policies explain that Commission members, and volunteers, are supposed to keep confidential institutional information which is confidential.⁵ It is not a legitimate mission of a “reliable” accreditor to demand secrecy which conceals Commission violations of its policies, the law, or Federal or State requirements.

It is especially disturbing that the Commission *secretly conceived* and developed these new policies aimed at making Commission procedures *even more secret*. Such a reaction to a Complaint alleging Commission violations of Federal and State law again illustrates the Commission’s unsuitability for recognition by the DOE.

4. ACCJC’s Actions to Prevent Public Comment and Otherwise Restrict Communications, Are Illegal

ACCJC’s own policy requires that it “Provide an opportunity for institutional representatives and the general public to attend those portions of Commission meetings devoted to policy matters and others of a non-confidential nature.” (Policy on Commission Good Practices in Relations With Member Institutions” no. 22). Permitting no more than around 20 members of the public to

⁵ See, e.g., Policy on Commission Good Practice With Member Institutions, No. 19, requiring that team members keep institutional information confidential.

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attend the June 7, 2013 meeting, and keeping a large public contingent and news media reporters from entering the meeting, violates this Policy. Given that the meeting room permitted up to 150 more people, barring these prospective attendees from entering is an egregious violation of this Policy.

5. ACCJC Has Adopted Policies and Procedures Which Are Not Widely Accepted and Are Unfair and Unreasonable

It is worthwhile to consider that ACCJC also adopted at its June 7th meeting a new, broader “loyalty” policy in which commissioners are now expected to “**accept and subscribe**” not only to the **purposes of accreditation**, but also to “**the ACCJC’s purposes, Eligibility Requirements, Accreditation Standards, Commission policies, and processes.**” (Revised Policy on Professional and Ethical Responsibility of Commission Members, p. 1, ¶ 1, emphasis added) This is akin to requiring one to no longer just “uphold the Constitution of the United States,” but also to “approve the interpretation of the Constitution by Anton Scalia” or “by Ruth Bader Ginsberg.”⁶ We do not doubt that ACCJC uses words to say what they mean, and the term “subscribe” is defined as “to give approval to something written by signing.”⁷

Presumably this new ACCJC “loyalty” policy could be wielded by the Commission to dismiss commissioners who question or oppose existing (or proposed) Commission Standards policies

⁶ While we don’t deny that commissioners must *abide* by (i.e. be obedient to) those policies and processes that govern them and are consistent with Federal and state law, such as a conflict of interest policy that is consistent with legal requirements., the requirement that they must *subscribe* (that is, *approve of*) to Commission Standards, policies and procedures would presumably inhibit commissioners from asserting or deciding that some Commission policies, standards and processes violate Federal or State law, as alleged in the Complaint.

For example, the April 30th Complaint alleges the improper reliance by the Commission on colleges’ pre-funding OPEB liabilities, that the Commission’s review of CCSF was prejudiced by the appointment of President Beno’s husband to the evaluation committee, and that the procedures used by ACCJC in its evaluation of CCSF violated Federal law (*See* April 30th Complaint, Sections IV, V and VII). If Commissioners must “subscribe” to these policies and processes, then it appears they lack the independent judgment required by Federal and State law to carry out their accrediting mission, and to review, without bias, the allegations of the Complaint.

⁷ See *Webster’s Unabridged Dictionary*, at:
<http://unabridged.merriam-webster.com/unabridged/subscribe>

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and processes, such as those CFT and others have alleged violate Federal law. In this sense it hamstrings commissioners who are appointed as representatives of specific constituencies, such as members of the public, or administration, or faculty, or trustees, and who believe that current Commission Standards, policies or processes should be changed.

An “expectation” that commissioners henceforth will toe the “party line” is, however, consistent with ACCJC’s illegal policy requiring governing board trustees to speak as one. (See CFT’s April 30th Complaint, Section X.B.) This policy element irrevocably undermines fundamental purposes of an accrediting agency as decreed by the Congress and the DOE - to fairly and honestly debate and decide employ “standards [that] are adequate to evaluate the quality of education” of a college (mandated by **34 CFR § 602.21(a)**), to maintain “clear and effective controls” against conflicts of interest (**34 CFR § 602.15**), and to assure that its standards “effectively address the quality” of institutions it evaluates. ACCJC cannot honestly evaluate complaints filed against the Commission itself when it demands this degree of loyalty to its Standards, Requirements, purposes, policies and processes.

Furthermore, this expectation that every commissioner will accept and subscribe to the *Commission’s* policies, procedures, etc., is not “widely accepted” in the United States among educators, educational institutions, and accrediting bodies.⁸ Hence the adoption of this revised policy appears to violate **34 CFR section 602.13**, which requires wide acceptance.⁹

⁸ For example, the Middle States Association, North Central Association, Northwest Association, and the WASC’s own Accrediting Commission for Senior Colleges and Universities maintain no such policy. The New England Association has a similar, but notably less restrictive version, which requires only that commissioners must subscribe to the purposes of accreditation as defined in Commission/ Association policy. This contrasts with ACCJC’s requirement that every rule, policy, standard, and published document must be approved of by their so-called independent Commissioners,. The New England Association’s “purposes of accreditation” are outlined in a “Mission Statement,” which is one paragraph long.

⁹ At the same June 7th meeting, the Commission adopted a revised operational “Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Commission Representatives” which allows the Commission to “suspend or remove” other Commissioners who have a conflict or appearance of a conflict of interest. (See **Attachment 9**) While preventing conflicts is a worthy goal, the Commission’s policy, thanks to the “subscribe” proviso, seemingly allows it to treat a commissioner’s opposition to current Commission policies or procedures or proposal of revised policies or procedures, as a conflict, thereby allowing for removal of a dissident commissioner. (The Commission’s bylaws already

Kay Gilcher, Director, Accreditation Division
Office of Postsecondary Education
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The DOE requires that an accrediting body “review in a ... fair, and equitable manner, and apply *unbiased judgment* to, any complaint against itself ...” (34 CFR § 602.23(c)(3)) ACCJC has disregarded this duty. Rather, it has (1) threatened CFT representatives who sought to file the Complaint with potential arrest, (2) adopted new policies in violation of its Bylaws, aimed at coercing witnesses from revealing facts relevant to ACCJC’s actions, (3) barred members of the public from appearing at an important Commission meeting where controversial new policies, secretly conceived, were supposed to be discussed and were adopted without discussion; (4) improperly asserted to former volunteer team members that they cannot discuss or provide evidence they have with the CFT or its lawyers or the media; (5) asserted, in violation of California law, that team members are now represented by lawyers whom they never selected or hired or probably never spoke with; and, (6) restricted future comments by commissioners and volunteer team members from commenting on or challenging ACCJC’s procedures and policies.

ACCJC is required by the Higher Education Act to “demonstrate the ability to operate as an accrediting agency.” (20 U.S.C. § 1099b(1)). The Commission fails this requirement when it arbitrarily excludes the public, and the constituents of a college under review such as the students and faculty of CCSF, or representatives of complainants, from attending a Commission meeting, particularly a meeting which considered - and could have discussed - significant changes in Commission procedures.

All in all, since the filing of the Complaint on April 30th, ACCJC has systematically acted unfairly, and in a biased and retaliatory manner, toward those who have complained about its actions, and to prevent public knowledge and accountability regarding them.

C. Conclusion

The deliberate destruction or shredding of documents crucial to a complete and accurate record of an accreditation review violates the letter and spirit of Federal law. So do the other efforts by the Commission to prevent disclosure or discussion of potential irregularities in an accreditation review. ACCJC’s new or revised policies are also contrary to the requirement of complete and accurate records of Commission decisions, and to other requirements discussed above.

Today the Commission’s Standards, activities, processes and policies are being questioned and challenged through numerous complaints. These complaints raise serious issues. They also underscore the lack of transparency which accompanies Commission activities. The

provide that a commissioner may be removed by a 2/3 vote of the Commission for conduct that is “detrimental to the purpose of the Commission.” (Bylaws, Article III, Section 5.)

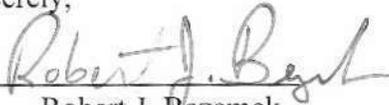
Kay Gilcher, Director, Accreditation Division
Office of Postsecondary Education
US Department of Education
July 1, 2013

Commission's reaction to these complaints has been reflected not only in its defensiveness and hostility, but also by further illegal actions aimed at reducing transparency in Commission activities. The Commission's actions violate the various Federal regulations referenced above, and Federal and state due process principles. Together, these actions have adverse impacts on institutions it accredits, the students and employees of those institutions, and the public as a whole.

ACCJC should be required to respond to this complaint as required by law and bring its operations into compliance with Federal requirements. It should also remedy the violations it has committed by, as appropriate, rescinding or modifying its policies and procedures, or it should no longer be recognized as a reliable accrediting body.

Sincerely,

Dated: July 1, 2013

By: 
Robert J. Bezemek
Counsel for Complainants

Supplemental Information

II. Errata to the April 30, 2013 Complaint

Attached as **Attachment A** is errata to the April 30th Complaint, correcting inadvertent errors.

III. List of Attachments to the April 30, 2013 Complaint with Page Numbers

Attached as **Attachment B** is a list of attachments submitted with the April 30th Complaint, which includes their **page numbers**.

IV. Searchable PDF of Attachments

Attached within a series of emails submitted concurrently herewith are searchable PDF files of the above-referenced Attachments.

V. Table of Authorities Cited in the April 30, 2013 Complaint

Attached as **Attachment C** is a Table of Authorities for authorities those cited in the April 30, 2013 Complaint, including Federal regulations.

Kay Gilcher, Director, Accreditation Division
Office of Postsecondary Education
US Department of Education
July 1, 2013

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Bezemek". The signature is written in a cursive style with a large, stylized initial "R".

Robert J. Bezemek
Counsel for Complainants

cc: CFT
AFT 2121

**List of Attachments to
Amendment to Complaint of the CFT and AFT 2121, et al. Against the Accrediting
Commission of Community and Junior Colleges for Adopting A Policy to Destroy and
Shred Evidence of Commission Actions and For Other Actions**

No.	Date	Description
1	6-7-13	ACCJC's new "Statement on the Process for Preserving Confidentiality of Documents Related to Institutional Evaluations".
2	5-10-13	Letter to Barbara Beno, President, ACCJC, and Dr. Sherrill Amador, Chair, ACCJC, re: Request for Information and Notice of Legal Hold - Preservation of Data.
3	5-15-13	Letter to Robert J. Bezemek from Laurence Kessenick acknowledging receipt of the May 10 Legal Hold letter.
4	5-21-13	Letter to Laurence Kessenick from Robert J. Bezemek explaining that under California law, ACCJC does not "represent" former visiting team members.
5	5-23-13	Letter to <i>former</i> visiting team members of ACCJC who had reviewed CCSF in March 2012, from ACCJC lawyers.
6	6-25-13	<i>San Francisco Chronicle</i> article entitled, "CCSF turns tables - accreditors under scrutiny" "Accreditors under scrutiny after union files complaint", by Nanette Asimov
7	6-13-13	Letter to Laurence Kessenick from Robert J. Bezemek regarding ACCJC - Legal Hold Notice of the California Federation of Teachers, et al.
8	6-7-13	ACCJC's revised "Policy on Professional and Ethical Responsibilities of Commission Members".
9	6-7-13	ACCJC's revised "Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Commission Representatives".
A		Errata to the Complaint and Third Party Comment Submitted April 30, 2013 to the ACCJC by the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, et al.
B		Table of Attachments to the Complaint and Third Party Comment Submitted April 30, 2013 to the ACCJC by the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, et al.

C	Table of Authorities to the Complaint and Third Party Comment Submitted April 30, 2013 to the ACCJC by the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, et al.
---	--

Statement on the Process for Preserving Confidentiality of Documents Related to Institutional Evaluations

(New Policy for Adoption June 2013)

Commissioners, ACCJC committee members, and members of evaluation teams, in the course of reviewing institutions, may be given copies of confidential documents pertaining to ACCJC's business and to the institutions under review. Confidential documents include, but are not be limited to, personal notes by the Commissioners, team and committee members, institutional self-evaluations, team reports, committee reports, institutional audits, letters or memos to or from ACCJC affecting the institution, draft action letters, evidentiary documents provided by an institution, and any documents containing information that would generally be considered proprietary by the institution.

Commissioners, team and committee members should consider all documents pertaining to an institution as highly confidential, unless the documents are explicitly identified in writing to the contrary. Accordingly, Commissioners, team and committee members must take reasonable measures to assure the confidentiality of documents in their possession and may only discuss the contents of such documents with anyone required to have the information in connection with the matter under review.

At such time as continued possession of such documents is no longer necessary, Commissioners, team and committee members who are in possession of such documents will be expected either to return them to ACCJC's President (or to the President's designee) or destroy them by having them shredded. Commissioners, team and committee members are not permitted to physically or electronically store or retain such documents in their possession following their usage for the relevant institutional review. At the adjournment of Commission, team, and committee meetings, the responsible ACCJC staff representative may ask that some or all of the documents pertaining to the institution be returned to the ACCJC office by delivering them to the staff person.

New Policy for Adoption June 2013

000003

ROBERT J. BEZEMEK
PATRICIA LIM
DAVID CONWAY

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rjbezemek@bezemeklaw.com

SENT VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 10, 2013

Barbara Beno, President
Accrediting Commission for Community
and Junior College
10 Commercial Blvd., Suite 204
Novato, CA 94949
(Certified Mail No. 7007 1490 0002 1959 6323)

Dr. Sherrill Amador, Chair
Accrediting Commission for Community
and Junior College
10 Commercial Blvd., Suite 204
Novato, CA 94949
(Certified Mail No. 7007 1490 0002 1959 6354)

**Re: Complaint of the California Federation of Teachers, AFT, AFL-CIO and
AFT Local 2121, et al.
Request for Information and Notice of Legal Hold – Preservation of Data**

Dear President Beno and Chair Amador,

This firm represents the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, and individuals denoted on the Complaint submitted to the Commission on April 30, 2013 (herein referred to as "Complainants.")

This letter has two purposes. First, to *request information* needed to assist in the Complaint filed with the Commission and in regard to Comment to the Department of Education in connection with ACCJC's upcoming review for renewed accreditation. Second, to *institute a Legal Hold* by notifying the ACCJC that in connection with the matters raised in the Complaint filed with the ACCJC, and submitted concurrently to the U.S. Department of Education, the ACCJC is now under a **legal duty to preserve all evidence**, whether in printed or electronic form, that might become relevant in these matters or in subsequent judicial proceedings, and to continue to preserve such evidence related to these matters.

300004

Attachment 2

Barbara Beno, President
Dr. Sherrill Amador, Chair
Accrediting Commission for Community
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May 10, 2013

Request for Information

In the course of preparing the Complaint, several issues arose for which Complainants require additional information. As an organization charged with a public purpose pursuant to California and Federal law, the California Code of Regulations, tit. 5, section § 51016, the Commission is asked to promptly provide the requested information. While some of these information items are identified in the Complaint, for convenience we include them here as well.

1. Please provide a copy of any and all writings revealing, memorializing or denoting any financial payments, compensation or contributions of any kind from the Community College League of California to the ACCJC¹ from January 1, 2005 to the present.²

2. Please provide a copy of any and all writings revealing, memorializing or denoting any financial payments, compensation or contributions of any kind from the CCLC Retiree Health Benefits JPA to the ACCJC from January 1, 2005 to the present.

¹ As used herein, the term "ACCJC" includes, but is not limited to, the officers, commissioners, staff, team members and any other agents or employees of the ACCJC, whether as a result of his or her association with ACCJC, or individually (e.g. as the "president" of ACCJC or as "Barbara Beno," an individual.)

² "DOCUMENT" or "DOCUMENTS," "WRITING," or "WRITINGS" as used herein, means a writing as defined in Evidence Code section 250, and includes the original or a copy of any kind of handwriting, typewriting, printing, photographs, photostats, photocopies, transmissions by fax and e-mail, and "every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored," or recorded material whatsoever, including, but not limited to notes, memoranda, letters, articles, telegrams or other correspondence, work sheets, data compilations, audio or video recordings, microfilm, microfiche, recordings, studies, analyses, opinions, books, reports, transcriptions of recordings, information retrievable from computers, computer data recorded on tapes, disks or other media, pictures, drawings, photographs or other graphic representation, and any other physical means of communication including tape recordings and magnetic tape. The term specifically includes any drafts, whether or not used, of the foregoing and any altered or annotated copies of the foregoing.

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3. Please provide a copy of any and all writings indicating when the ACCJC became a Conference "Partner" of the ACCJC. The term "conference partner" is used to refer to partners such as ACCJC, identified by name in the *League in Action* newsletter, Spring 2006, p. 1, attached in the Appendix to the Complaint and Comment as bates page 286.

4. Please provide any and all writings revealing whether the ACCJC has shared in the "gate" or "receipts" of conferences or other events held as a "partner" of the CCLC, or a participant in a CCLC event, the date of such conference and events, the terms on which the ACCJC shared, and the amount paid to ACCJC by the CCLC and the reason thereof.

5. Please indicate whether, as a "conference partner" of the CCLC, the ACCJC has received any other monies besides those identified in the previous request, from the CCLC, or from any other source, arising out of said conferences since January 1, 2005. For any such monies, please provide any and all writings disclosing the amount of monies received by ACCJC, or any of its members, for any purpose, including for each conference or other activity.

6. Please provide a copy of the complete evaluation team recommendation for action, if any exists, for the visiting team which evaluated City College of San Francisco on or about March 11 - 15, 2012.

7. Please provide a complete copy of the "Confidential Recommendation Form", if utilized in connection with the review of CCSF during March 2012, a facsimile of which appears in the Team Evaluator Manual at "Appendix A," and is denoted as the "Sample Confidential Recommendation Form."

8. Please provide a copy of the complete evaluation team recommendation for action, if any exists, for the visiting team which evaluated City College of San Francisco during on or about March 11 - 15, 2012.

9. Please provide a copy of the evaluation team recommendations and commendations from the visiting team which evaluated City College of San Francisco during on or about March 2012.

10. Please provide any and all emails between Peter Crabtree and any members of the evaluation team, including but not limited to Sandra Serrano, Michele Bresso and Sean James, in connection with the evaluation of CCSF which involved a visit on or about March 11 - 15, 2012, and any and all post-visit email communications concerning the evaluation team's report and

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evaluation.

11. Please provide any and all emails between Peter Crabtree and officers, agents and representatives of the ACCJC, in connection with the evaluation of CCSF from August 1, 2011 to the present.

12. Please provide any and all emails to or from Barbara Beno, and anyone acting on her behalf, concerning S.B. 1456, for the period of September 1, 2011 up to and including Sept. 1, 2012.

13. Please provide any and all emails to or from Barbara Beno, and anyone acting on her behalf, concerning the Student Success Task Force, from January 1, 2011 up to an including September 1, 2012.

14. Please provide any and all emails to or from Barbara Beno, and anyone acting on her behalf, concerning the Board of Governors meeting held on January 9, 2012 in regard to the Student Success Task Force.

15. Please provide any and all emails to or from Barbara Beno concerning A.B. 178, or any similar proposed legislation, from January 1, 2011 up to and including September 1, 2012.

16. Please provide any and all emails to or from Barbara Beno, Pamila Fisher, and anyone acting for or on behalf of ACCJC, CCSF, Barbara Beno or Pamila Fisher, in regard to Fisher's compensation or A.B. 178, from January 1, 2012 up to and including September 1, 2012.

17. Also, kindly provide any and all writings revealing whether the ACCJC has shared in the "gate" of conferences or other events with the CCLC, the date of such conference and events, the terms on which the ACCJC shared, and the amount paid to ACCJC by the CCLC.

18. We understand that Mr. Steven Kinsella has been a commissioner of the ACCJC since on or about October 1, 2009, and continues to serve as a commissioner. Kindly provide and all writings, including but not limited to minutes, notes and all other writings indicating whether Mr. Kinsella recused himself, or was recused, from voting on any matter before the Commission since October 1, 2009.

19. Kindly indicate whether or not Mr. Kinsella, as a Commissioner, voted on the following matters and, if so, please provide any and all writings which confirm this:

Barbara Beno, President
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- a. January 2012, in regard to accreditation status of Solano College.
- b. January 2011 in regard to the accreditation status of Napa Valley College.
- c. January 2011 in regard to the accreditation status of Antelope Valley College.
- d. January 2011 in regard to the accreditation status of Oxnard College.
- e. January 2011 in regard to the accreditation status of Ventura College.
- f. January 2011 in regard to the accreditation status of San Jose City College.
- g. July 2012 in regard to the accreditation status of San Francisco City College.
- h. January 2012 in regard to the accreditation status of Cuesta College.

20. Frank Gornick has been a commissioner of the ACCJC since in or about July 1, 2009, and continues to serve as a commissioner. Kindly advise if Mr. Gornick recused himself, or was recused from voting on any matter before the Commission since the date he was appointed as a Commissioner. If he was recused, kindly provide minutes, notes and any and all other writings which document this.

21. Please provide the Standard Assignments for all Evaluation Reports or Site-visit Teams that Commissioners Gornick or Kinsella have participated on.

22. In or about 2005, the Community College League of California published a "Special Report to Trustees and Chief Executive Officers" entitled: "Funding Retiree Health Benefits. A new financial challenge facing California Community College Districts," authored by Kinsella, Rodgers and Woodruff. A copy is included in the Attachments to the Complaint, and also appears following page 140 of the Complaint.

This Special Report contains several quotes from President Beno and "A Statement Regarding GASB 45 from the Accrediting Commission," followed by "Barbara A. Beno, President August 2005."³ Please provide any and all writings which disclose how this Statement came to be included in the Special Report, including but not limited to whether ACCJC received any compensation for this Statement.

23. Please provide a complete copy of ACCJC's application for review for renewed recognition filed with NACIQI and the U.S. Department of Education in 2006.

³ The date of President Beno's statement is correctly cited as August 2005 at page 139 and elsewhere in the Complaint, but is mis-cited as August 2006 on page 140.

Barbara Beno, President
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Notice of Legal Hold

This Notice informs ACCJC, its officers, agents, representatives and employees, that Complainants are instituting a *legal hold* or *litigation hold* to preserve relevant data. This notice of a "legal hold" or "litigation hold" means that ACCJC, its officers, agents and representatives, has a duty to preserve relevant information based upon the Complaint, any investigation by the US Department of Education or other bodies, and reasonably anticipated legal action. This legal hold requires that the ACCJC notify all individuals in possession of materials requested herein, of their obligation to retain writings as specified in this notice.

"Writings" and "Documents" as used herein has the same definition as set forth in the request for information, above.

"Records" as used herein means anything that stores information:

- In any medium: paper, electronic, video and audiotape, including e-mails, voice mail, text messages, and any other electronic files;
- In any form: handwritten or typed, draft or final, desk or electronic calendars;
- Created at any time, including writings you created in the past, as well as any writings you may create from this date forward;
- Wherever maintained: whether on your computer, in your office, in departmental files, in a home office, on a home computer, in your car, or elsewhere.

"This dispute" refers to ACCJC's evaluation and sanction of City College of San Francisco, starting with (1) ACCJC's actions beginning in 2007 to review and respond to reports filed with ACCJC in connection with CCSF's accreditation and the follow-up activities; (2) ACCJC's receipt of information (self-study, etc.), appointment of an evaluation team, assessment of CCSF by a visiting team, and sanctions action in June 2012; activities by ACCJC which are referenced in the Complaint involving, *but are not limited to*, (a) ACCJC's involvement in supporting the Student Success Task Force and SB 1456, and related matters; and, (b) communications between CCSF and ACCJC from January 1, 2006 to the present; (c) ACCJC's involvement with the CCLC; and, (d) ACCJC's support of AB 178.

You are required to take the following steps immediately to protect and preserve any information or evidence that is in your possession or under your control, including but not limited to information of the ACCJC and its officers, agents, representatives and employees, until further notice concerning this dispute, and which you know or should reasonably know

Barbara Beno, President
Dr. Sherrill Amador, Chair
Accrediting Commission for Community
and Junior College
May 10, 2013

exists and is in your possession. Specifically, you will need to:

1. Suspend deletion, overwriting, or any other destruction of electronic information relevant to this dispute that is under your control. This includes electronic information wherever it is stored at your workstation, on a laptop, or at home. It includes all forms of electronic communication, e.g., e-mail, word processing, calendars, voice messages, videos, photographs, information in your PDA. This electronic information must be preserved so that it can be retrieved at a later time. This information must be preserved in its original electronic form, so that all information contained within it, whether visible or not, is also available for inspection, i.e., it is not sufficient to make a hard copy of electronic communication.
2. Preserve any new electronic information that is generated after you receive this letter that is relevant to this dispute.
3. Preserve any hard copy under your control.

Even if the relevant information covered by this hold is only a small portion of a particular record – for example, a single bullet point – you must retain the entire record. If you are uncertain whether a writing relates to this matter, please retain it. If the specified records exist in paper form, you must keep them, without alteration, organized in the way you would normally keep them for business purposes (for example, if you normally keep them in file folders, continue to do so). Unless your home office is your principal office, the records should be kept at a company location within the control of you or your department. Electronic records should generally be kept in electronic form. To the extent that any such records involve data that continually changes, you may satisfy the retention requirements by printing and retaining a monthly summary. If electronic files were created but not retained, please contact me and we will determine how best to recover these writings, including e-mails sent and received.

These records must be retained and maintained until you are informed by me that the matter has been concluded and the records no longer need to be retained. If you believe this legal notice should be provided to anyone else, please advise me. If you are aware of other individuals outside your company who might have writings relating to this matter, please let me know and I will send them a copy of this legal notice.

As used in this request, ACCJC means all officers, agents, employees and representatives of the ACCJC. This Request includes, but is not limited to, the following writings in connection with ACCJC's evaluation and action toward CCSF:

Barbara Beno, President
Dr. Sherrill Amador, Chair
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May 10, 2013

1. All writings requested in the Information Request, above.
2. All writings which accompanied the site visit evaluation of CCSF during March 2012, all writings related to the preparation for that evaluation, all writings related to the issuance of the team's Evaluation Report, and all subsequent actions of the ACCJC.
3. All writings relating to the assignments given to team members during the visit.
4. All writings relating to any recommendations from the team, any of its members, and its chair, regarding, *inter alia*, recommended action by the Commission (e.g. accreditation, warning, probation, show cause), included but not limited to writings containing signatures of team members.
5. All writings to or from President Barbara Beno, or any other officers or staff of the ACCJC in regard to the evaluation of CCSF for purposes of accreditation, and any follow up activities, from January 1, 2006 to the present (hence including, but not limited to, the 2007, 2009 and 2010 ACCJC consideration of reports submitted to ACCJC by CCSF).
6. All writings which indicate those members of the Commission who voted on whether to place CCSF on any sanction in June 2012 (we have no objection to redaction of how they voted, without prejudice to later demands for information as to how they voted).
7. All writings which indicate those members of the Commission who were recused or did not vote on whether to place CCSF on any sanction in June 2012.
8. All writings which set forth monies received by the ACCJC from the CCLC, on account of or a result of ACCJC participation at CCLC conferences, and including payment or reimbursement for accommodations, travel, meals and expenses, and the like, including not limited to the following:
 - a. CCLC 2010 Annual Convention, November 18-20, 2010
 - b. Southern California CEO Conference, April 20-22, 2011
 - c. Annual CCLC Trustees Conference, April 29-May 1, 2011
 - d. Northern California CEO Conference, March 18-20, 2012
 - e. Southern California CEO Conference, April 11-13, 2012
 - f. Annual CCLC Trustees Conference, May 4-6, 2012
 - g. CCLC Conference, November 15-17, 2012

Barbara Beno, President
Dr. Sherrill Amador, Chair
Accrediting Commission for Community
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May 10, 2013

- h. Effective Trusteeship Workshop, Sacramento, January 25-27, 2013
- i. Northern California CEO Conference, March 10-12, 2013
- j. Southern California CEO Conference, April 10-12, 2013.
- k. Annual CCLC Trustees Conference, Ritz Carlton, Lake Tahoe, May 3-5, 2013

9. All writings which include any reference to AB 178, and all communications to, from, or on behalf of CCSF acting president Pamila Fisher concerning AB 178 or her compensation as an employee of CCSF.

We request that the ACCJC promptly acknowledge receipt of this Legal Hold and confirmation of its intention to comply with this Notice.

Should you have any questions, please contact the undersigned.

Very truly yours,



Robert J. Bezemek
Counsel for Complainants

cc: California Federation of Teachers
AFT Local 2121

May 15, 2013

VIA EMAIL and FEDEX

Robert J. Bezemek
Law Offices of Robert J. Bezemek, A Professional Corporation
The Latham Square Building
1611 Telegraph Avenue, Suite 936
Oakland, CA 94612-2140

Re: WASC Accrediting Commission for Community and Junior Colleges

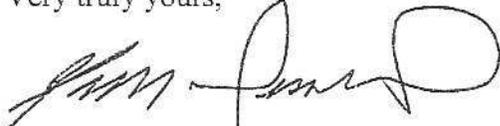
Dear Mr. Bezemek:

We are legal counsel for the WASC Accrediting Commission for Community and Junior Colleges ("ACCJC"). Please be advised that our legal representation of ACCJC extends to its directors, officers, employees, and persons serving on its Commission and Visiting Teams, including but not limited to the ACCJC staff and team members involved with the review of City College of San Francisco.

We are in receipt of the third party comment and complaint of the California Federation of Teachers, which was delivered to the ACCJC at its offices on April 30, 2013. We are also in receipt of your most recent letter to Barbara Beno and Sherrill Amador, dated May 10, 2013, regarding your requests for information and notice of legal hold.

This letter serves as notice that any and all further requests or communications to ACCJC or its staff regarding this matter must be directed or delivered to me, using the contact information below.

Very truly yours,


Laurence W. Kessenick

ROBERT J. BEZEMEK
PATRICIA LIM
DAVID CONWAY

LAW OFFICES OF
ROBERT J. BEZEMEK
A PROFESSIONAL CORPORATION
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rjbezemek@bezemeklaw.com

Sent By First Class U.S. Mail and E-Mail

May 21, 2013

Laurence W. Kessenick
Kessenick, Gamma & Free, LLP
44 Montgomery St., Suite 3380
San Francisco, CA 94104

Re: ACCJC

Dear Mr. Kessenick:

As you know, we represent the California Federation of Teachers, AFT Local 2121, and others submitting a Complaint and Third Party Comment to the ACCJC on April 30, 2013. Thank you for your letter dated May 15, 2013 in regard to the Third Party Comment and Complaint and our letter to ACCJC of May 10, 2013, which requested information and notified the ACCJC of a Legal Hold. I trust you will be responding to the substance of our letter.

After reviewing your letter, we will of course respect your representation of the ACCJC and its current officers and members of its "control group", and the Commission as an entity. Nor do we have any intention of communicating directly with current Commission officers or control group members in regard to the Complaint and letter.

However, your letter also declares that your firm's legal representation of the ACCJC encompasses not just the Commission and its current officers, but extends to Commission "employees ... and persons serving on its Commission and visiting teams." A lawyer's unilateral declaration that someone is his or her client does not create an attorney-client relationship, where none otherwise exists. *Koo v. Rubio's Restaurants, Inc.* (2003) 109 Cal. App. 4th 719, 732. The question of communicative rights is primarily guided by State Bar Rule 2-100, the successor of Rule 7-103. I have some familiarity with these rules, not only as counsel to many labor unions, but as the author of an article about the Bar's consideration of this issue in the context of former Rule 7-103, in 1986 and 1987, for which I wrote a leading article on the subject, and testified before the Bar at its hearings concerning the proposed Rule. (See, e.g., *Limiting Access to Non-Party Employees of an Employer*, The State Bar of California, *Labor & Employment Law News*, Vol 5, No. / 3, Fall 1986, Robert J. Bezemek)

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Attachment 4

Laurence W. Kessenick
May 21, 2013

Rule 2-100 forbids a member of the Bar from communicating about the subject of representation, with a party the member knows to be represented by counsel. Subpart B defines "party", and Subpart C indicates the Rule does not prohibit certain communications, including those "otherwise authorized by-law." The "discussion" which accompanies the Rule clearly states that the definition of party (subpart "B") is "intended to apply only to persons *employed* at the time of the communication.[citation]." (Emphasis added)

There are, to our knowledge, no *current* visiting team members. There are, however, thousands of *former* visiting teams members living and working within California, but your representation of ACCJC does not authorize your representation of these *former* visiting team members. Nearly all of these *former* visiting team members are not and have never been employees of the ACCJC.¹ California law, and State Bar rules, affirm that *former* employees are "fair game" and are not "parties represented by counsel." *Nalian Truck Lines, Inc. v. Nakano Warehouse & Transportation Corp.* (1992) 6 Cal. App. 4th 1256, 1263; *Triple A Machine Shop, Inc. v. State of California* (1989) 213 Cal. App. 3d 131, 139-142. Certainly our communications with *former volunteers*, who may have served as visiting team evaluators, independent of the Commission, for a few days at some point in the past, are afforded no less protection than our communications with *former* employees. After all, it is often only through the information they can provide to our clients, or us, that we and the public are able to obtain information relevant to complaints and comments.

In *Triple A*, the Court relied on State Bar Rule 2-100 to conclude that counsel was entitled to directly approach former employees, explaining that:

"Paragraph (B) is intended to apply only to persons employed at the time of the communication.' Thus, rule 2-100 permits opposing counsel to initiate *ex parte* contacts with unrepresented *former employees*, and present employees (other than officers, directors or managing agents) who are not separately represented, so long as the communication does not involve the employee's act or failure to act in connection with the matter which may bind the corporation, be imputed to it, or constitute an admission of the corporation for purposes of establishing liability." *Id.* at 140, emphasis added.

Former visiting team members (with the few exceptions noted) are not within the "control group" of high-level managerial employees of ACCJC, and are merely "witnesses" to ACCJC's operations. They are not high-ranking executives or spokespersons with the authority to speak on behalf of ACCJC, cannot bind ACCJC, and are not "owned" by ACCJC. Thus ACCJC "cannot preclude opposing counsel from contacting its former employees [or, I

¹ We have no intention of communicating with former visiting team members who are current officers of the ACCJC.

Laurence W. Kessenick
May 21, 2013

might add, former volunteers], who may disclose unfavorable facts.” *Jackson v. Ingersoll-Rand Co.* (1996) 42 Cal. App. 4th 1163, 1168-1169, referring to *Nalian Truck Lines, Inc., supra.*, 6 Cal. App. 4th at 1263.

Given the foregoing, we disagree that your current representation of ACCJC prohibits contact between our firm, or any one, with *former* team members, *former* employees, or *former* commissioners.

In your letter you also demand that “any and all further requests or communications to ACCJC or its staff” regarding “this matter” be “directed or delivered to you.” While your letter is not entirely clear, it appears that by using the term “this matter” you are including the Complaint and Comment, and potentially subsequent complaints, not just the May 10 letter. Your request goes too far if it seeks to restrain our filing or submitting of documents to the ACCJC in connection with pending matters, or in regard to future complaints or comments. It would be akin to a lawyer who was defending the NLRB in a union lawsuit in the 9th Circuit, demanding that the union lawyer cease filing unfair labor practice charges with the NLRB regional office and instead file them with him or her. Such a request would be considered unjustified.

Federal law provides that ACCJC *itself* must accept and then respond to all complaints filed with it. (See 34 C.F.R. § 602.23 (c)(3)) In addition, we submitted the Third Party Comment with ACCJC in accordance with both Federal law (34 C.F.R. § 602.23 (b)), and ACCJC’s Good Practice Policy. Federal law and ACCJC policy appear to contemplate that such complaints and comments be submitted directly to the accrediting body, as would occur with any public agency or *public body*. State Bar Rule 2-100 exempts from its scope communications with a “public officer, board, committee or *body*.” It appears to us that it would be problematic to file such documents with your firm, as opposed to the body itself (ACCJC), which is charged with receiving and responding to such comments and complaints. We believe such a restriction would conflict with Constitutional and statutory rights of our clients, including students and faculty, and ourselves, to file or submit comments and complaints directly with the Commission, and to request the opportunity to appear before the Commission at its next meeting, should we elect to do so, as permitted by Commission policy. Receipt of such documents is simply a ministerial matter for the Commission, and seems contemplated by Rule 2-100.

Furthermore, there is little doubt that regardless of whether the ACCJC is considered to be a public agency, *it is considered to be a public body*. See e.g., *Hilden v. Hurley Medical Center*, 831 F. Supp. 2d 1024, 1042, (ED Mich. 2011) In *Hilden*, the court found that a “private” accreditation body similar to the ACCJC, which was approved by a federal agency to accredit hospitals, was a public body. ACCJC has declared that it exists to “assure the ... general public ...” of the quality of an educational institution in connection with Federal

Laurence W. Kessenick
May 21, 2013

and ACCJC standards. (See ACCJC Bylaws, Section I.2.) The facts are indisputable that most of ACCJC's funding comes from the California community colleges; the Board of Governors of the California Community Colleges have appointed ACCJC, as set forth in State law, to be the accreditor of the community colleges within the California Community College System; the Board of Governor's has an appointee to the Commission itself; the vast majority of commissioners are either representatives of the public, or of public institutions; California public colleges constitute the bulk of the Commission's "member" institutions; and, the Commission is charged with satisfying Federal law and respecting the public policy of California. The State Bar deliberately employed the term "public body" in Rule 7-103 and its successor.

Our clients, sometimes acting through counsel, anticipate filing an amended or supplemental complaint (s) and other documents directly related to matters pending or properly before the Commission, with the Commission itself during the next several months. Likewise, our clients may seek to appear before the Commission at its next meeting. They are, of course, entitled to legal representation in any such filing or appearance, which therefore might involve myself or another lawyer directly addressing the Commission. Such an appearance is expressly permitted by Rule 2-100.

Should you wish to confer about these matters, kindly contact me at your convenience.

Sincerely,



Robert J. Bezemek
Counsel for the CFT, AFT 2121, *et al.*

cc: California Federation of Teachers
AFT Local 2121

Memorandum

TO: Evaluation Team Members of the March 2012 visit to City College of San Francisco.
FROM: Laurence Kessenick, Kessenick Gamma & Free, LLP, legal counsel
DATE: May 23, 2013
RE: Possible future contacts from the California Federation of Teachers ("CFT") or their attorneys, the law firm of Robert J. Bezemek; relating to the sanction imposed on City College of San Francisco ("CCSF").

The ACCJC received a formal complaint against itself from the CFT, written by their lawyers, the Bezemek law firm. The complaint is an attack on the procedures and process the ACCJC employed when it imposed a sanction on CCSF. The ACCJC has a formal policy which governs complaints against itself, and it is following that policy in reviewing and responding to the complaint.

The purpose of this memo is to inform you that, as an evaluation team member, you should consider that you are at all times represented by our law firm in any issue that relates to review of and the sanction imposed on CCSF. If you wish to decline this assistance, you may of course inform us to this effect at any time. This assistance is provided to you at no cost. It is part of the service the ACCJC always affords evaluation team members if some legal issue arises that relates to their service to the ACCJC. We have informed the Bezemek law firm that you are represented by our law firm and that, accordingly, they may not contact you about any matter related to the CCSF matter. If they wish to speak with you, they are supposed to go through our firm.

Although unlikely, it is nevertheless possible that someone from the Bezemek firm may attempt to contact you directly, either by phone call, letter, or email. If you receive any communication from the Bezemek law firm or from any law firm, except our firm, related to the CCSF matter, we recommend that you immediately inform the person contacting you that your attorney in any matter involving CCSF and the ACCJC is Laurence Kessenick of Kessenick Gamma & Free, LLP and that the person contacting you should speak to me. They are then required by the Bar Association Rules of Professional Conduct to cease asking you any further questions and contact us. My direct line is (415) 362-9408. If any such contact occurs, please also inform me as soon as possible.

To: Evaluation Team Members of the March 2012 visit to CCSF
May 23, 2013
Page 2 of 2

You may also be contacted by someone who requests information from you who is not directly associated with the Bezemek law firm, but who has some other association with CCSF. Again, please just let the person know that you are represented by legal counsel in this matter and they should contact our law firm.

You may be contacted by someone who says they are from a news service or some other publication. In such a case, please do not discuss the matter but refer them to Barbara Beno (415) 506-0234.

Finally, it is possible that you may have retained personal notes, ACCJC agendas, or copies of documents that pertain to your service related to CCSF. If that is the case, we would ask that you not destroy any written materials that you have retained. These documents are not public (regardless of whether you work for a public college), but it is important to preserve them for the present. Under no circumstances, share any written materials you may have retained with any third person. If anyone requests any written materials from you that relate to the ACCJC/CCSF matter, please let me know immediately. I will advise you regarding how you should respond.

If you have any questions concerning this memo or the ACCJC matter, please do not hesitate to call Barbara Beno (415) 506-0234 or contact me directly (415) 362-9408. Thank you.

Local

San Francisco Chronicle

CCSF turns tables - accreditors under scrutiny

Accreditors under scrutiny after union files complaint



Carlos Avila Gonzalez, The Chronicle

Alisa Messer, president of the CCSF faculty union, is encouraged the complaint is being taken seriously.

By Nanette Asimov

June 25, 2013

If City College of San Francisco's faculty union hoped to stir trouble for the accrediting commission that has been breathing down the school's neck for a year with threats of closure, it has succeeded.

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Attachment 6

With two weeks left before the Accrediting Commission for Community and Junior Colleges reveals its judgment on City College, the U.S. Department of Education is scrutinizing the commission's own way of doing business.

That's due to a nearly 300-page complaint about the commission from the California Federation of Teachers, and nearly 900 pages of supporting documentation. It alleges conflicts of interest and says the commission skirted its own rules last year when it ordered City College to transform itself or lose accreditation, a fatal matter.



The commission received the complaint, investigated itself, and dismissed the allegations in seven quick pages.

The U.S. Department of Education had a different take, ordering a "full and documented response" from the commission by July 8.

"The concerns of the California Federation of Teachers about the commission are taken seriously," Kay Gilcher, the Education Department's accreditation director, wrote to the commission's president, Barbara Beno, this month.

Accused of crossing line

In its complaint, the union accuses the commission of overstepping standards required of the nation's six regional accrediting commissions - all quasi-private, nonprofit agencies overseen by the U.S. Department of Education.

The faculty say that California's accrediting commission is overly harsh with all schools, but crossed the line when it issued its most severe sanction on City College without first imposing lesser penalties.

The complaint accuses the commission of conflicts of interest, including allowing Laney

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College dean Peter Crabtree, President Beno's husband, to serve on the team that evaluated City College last year.

It also calls the commission too secretive - an image the commission did not dispel on June 7 when it barred dozens of people from the public portion of its meeting in Burlingame.

In the Education Department's letter, Gilcher told Beno to take that meeting into account in her response.

The feds' stern attitude gratifies the statewide faculty union and its City College affiliate, Local 2121, which jointly filed the complaint on April 30 - and a second one this month about the commission's breezy dismissal of its case.

"We're quite encouraged to see the Department of Education taking the complaint seriously," said Alisa Messer, president of Local 2121.

The faculty union has been anything but complacent since the accrediting commission in Novato put the squeeze on City College in July.

Authority questioned

While the college has worked to address numerous deficiencies and violations of accrediting standards flagged by the commission - such as having too few qualified administrators and poor financial planning for the college of 85,000 students - the union has protested the commission's authority to require such an overhaul in the first place.

It's meant cuts in pay and benefits for faculty, who are still in bitter labor negotiations with the college.

Now, Messer said, "We hope this brings forward some significant changes in terms of how the commission is run."

What those could be are unclear. But the accrediting commission will undergo its five-year review from the Education Department this fall, and it's possible that issues raised in the faculty's complaint could be taken up in a more formal way at that time.

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The accrediting commission consists of 19 voting members, mostly college chancellors, faculty and education experts, and is supported with dues from member colleges.

On May 30, the commission said its own investigation had found nothing to substantiate the faculty's complaints.

Commission reviews itself

The commission found that it had been consistent in following its rules, did not engage in conflicts of interest, and did not spring any surprises on City College.

"Beginning in 2006, the Commission provided extensive professional advice and support to City College to help it come into compliance," according to the report posted on the commission's website. The report makes no apologies for not investigating many of the allegations. In fact, the report suggests that any they skipped were invalid on the face of it, partly because they came from a labor union:

"It is fair to conclude that these allegations are not reflective of the views, official or otherwise, of City College," the report says.

Its most detailed reply concerns whether it was a conflict for Beno's husband to have participated in the review of City College.

'Ordinary response'

"To suggest that the views of any one member of an evaluation team ... could have so influenced and prejudiced the views of the other 16 members and somehow led all of those other members to prepare an unfair and biased report against City College lacks credibility," the report concludes.

Meanwhile, the commission's staff said they weren't worried about being required to fully address the faculty union's concerns.

"This is an ordinary response from the U.S. Department of Education when it receives a complaint," said Krista Johns, the commission's vice president for policy and research.

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"Their procedure involves taking every complaint seriously.

"And it's part of our regular process to provide them with the information they seek."

Learn more

Complaints: Here are the complaints from the California Federation of Teachers:

<http://bit.ly/130GuIw>.

Response: Here is the Accrediting Commission for Community and Junior Colleges' report on its investigation of the allegations against it: <http://bit.ly/13Z1tbm>.

Previous coverage: Read all Chronicle stories about City College of San Francisco's yearlong fight to remain open and accredited:

www.sfchronicle.com/ccsfaccreditation.

Nanette Asimov is a San Francisco Chronicle staff writer. E-mail:

nasimov@sfchronicle.com Twitter: **@NanetteAsimov**

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SENT VIA FIRST CLASS U.S. MAIL AND E-MAIL TO lkessenick@kgf-lawfirm.com

June 13, 2013

Mr. Laurence W. Kessenick
Kessenick Gamma & Free, LLP
Attorneys at Law
44 Montgomery, Suite 3380
San Francisco, CA 94104

Re: ACCJC - Legal Hold Notice of the California Federation of Teachers, et al.

Dear Mr. Kessenick,

As you know, this firm represents the California Federation of Teachers, AFT Local 2121, and various individuals in regards to two Complaints, and a Third Party Comment, submitted to the Commission on April 30, 2013 and June 4, 2013, and to the U.S. Department of Education.

On May 10, 2013 we also served on the Commission a Request for Information and Notice of Legal Hold to preserve data. This Legal Hold included, but was not limited to, all writings in connection with ACCJC's evaluation and action toward CCSF. The Hold makes clear that it encompasses "all subsequent actions of the ACCJC" in regards to CCSF. Thus, the Legal Hold includes all writings in regard to the evaluation of CCSF during 2013, and all actions regarding CCSF during 2013.

Our letter asked ACCJC to acknowledge receipt of the Legal Hold and "provide confirmation of its intent to comply with this notice."

On May 15, 2013, through your letter to us, the Commission acknowledged receipt of the Request for Information and Notice of Legal Hold. However, the Commission has not provided confirmation of its intent to comply with this notice.

On June 12, 2013, we learned that at its meeting on June 5-7, 2013, the Commission adopted a new policy providing for shredding and destruction of documents in the possession of "Commissioners, team and committee members." (Statement on the Process of Preserving Confidentiality of Documents Related to Institutional Evaluations). This policy, on its face,

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Attachment 7

Mr. Laurence W. Kessenick
Kessenick Gamma & Free, LLP
June 13, 2013

conflicts with the Legal Hold.

In view of the failure to confirm the Commission's intent to comply with the Legal Hold and the new policy adopted in June 2013, we request that the Commission promptly confirm (1) that it will comply unconditionally with the Notice of Legal Hold and (2) take no action to implement its new policy for shredding and destruction of documents in connection with Commission activities in regard to CCSF.

Finally, does the Commission intend to provide the information requested in our letter of May 15, and if so, when?

Kindly respond immediately to this request.

Sincerely,



Robert J. Bezemek

cc: CFT
AFT Local 2121

Policy on Professional and Ethical Responsibilities of Commission Members

(Adopted January 2001; Edited June 2001, June 2003, June 2005; Revised June 2013)

Purposes of Accreditation the Commission

The ACCJC Commissioners are expected its members to accept and subscribe to the defined purposes of accreditation, and to support and uphold the ACCJC's purposes, Eligibility Requirements, Accreditation Standards, Commission policies, and processes.

The purposes of the Commission accreditation shall be the evaluation of member institutions to assure the educational community, the general public, and other organizations and agencies that an institution has clearly defined objectives appropriate to higher education; has established conditions under which their achievement can reasonably be expected; appears in fact to be accomplishing them substantially; is so organized, staffed, and supported that it can be expected to continue to do so; and demonstrates that it meets Commission standards. The Commission encourages and supports institutional development and improvement through self evaluation and periodic evaluation by qualified peer professionals¹.

Commission Responsibilities

The Commission as a whole:

- Establishes and periodically reviews Eligibility Requirements, Accreditation Standards, policies, and practices for member institutions;
- Serves as the primary decision-maker on accredited status of member institutions;
- Evaluates institutions in terms of their own stated purposes;
- Strives for consistency in determining accredited status of institutions;
- Assists in interpreting accreditation issues explaining broad purposes of accreditation and its intended impact on educational quality to the various publics served by the Commission.

Professional Responsibilities of Commission Members

A Commissioner:

- Participates in all Commission meetings and attends them for their entire duration;
- Studies documents as assigned prior to the meetings;
- Serves as an in-depth reader of evaluation visit materials as assigned;
- Votes according to his or her best professional judgment in the light of accordance with existing policy and standards;
- Participates on Commission committees and in activities representing the Commission's interests as assigned;

¹ ACCJC Bylaws

- Attends and actively participates in Commission activities such as evaluation team visits and retreats workshops;
- Participates in self study *evaluation* and evaluation of the Commission;
- Participates in Commission planning efforts;
- Ensures that all functions of the Commission are executed responsibly through the ~~Executive Director~~ *Commission President*;
- *Refers all inquiries or requests for information concerning ACCJC business, member institutions, and accreditation practices to the Commission President or Commission Chair who serve as the official spokespersons for the ACCJC;*
- *Speaks on behalf of the Commission only when designated to do so by the Commission President or Commission Chair;*
- Participates in the evaluation of the ~~Executive Director~~ *Commission President*;
- Notifies the Commission Chairperson or ~~Executive Director~~ *Commission President* in a timely manner if the Commissioner's position or status changes during a term so that the Commissioner no longer meets the requirement for the category to which appointed.

Ethical Responsibilities of Commission Members

A Commissioner:

- Respects the confidentiality of relationships between the Commission and the institutions it accredits.
- Avoids conflicts of interest and the appearance of conflicts of interest, and subscribes to the *Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Commission Representatives.*
- Is familiar with and adheres to established *Commission* bylaws and policies.
- *Notifies the Commission President or Commission Chair if s/he is unable to perform the duties and carry out the responsibilities of a Commissioner.*

Responsibilities of Commissioner Confidentiality in Reviewing Institutions

In reviewing institutions, a Commissioner will:

- *Treat all institution-related documents as confidential unless they are explicitly identified to the contrary in writing, and refrain from discussing all such documents and related information except within their role as Commissioners with those who have a need for such information in the course of reviewing an institution.*
- *Protect all confidential documents provided to Commissioners in the course of ACCJC business, and refrain from discussing all such documents and related information except within their role as Commissioners and with those who have a need for such information in the courses of conducting Commission business.*
- *Take reasonable measures to assure the confidentiality of all documents in their possession by retaining those documents only on private electronic devices such as computers or ipads, or in private paper files.*

- *Return to the ACCJC or dispose of all documents, paper and electronic, when it is no longer necessary to retain them and when they are no longer needed for the matter under consideration by destroying them, either by shredding them or permanently deleting them from all electronic files and devices.*
- *Adhere to the ACCJC "Statement On the Process for Preserving Confidentiality of Documents Related to Institutional Evaluations."*

Draft - Revisions for June 2013

Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Agency Commission Representatives

(Adopted June 1997; Revised June 1999, March 2001; Edited June 2005;
Revised January 2006, January 2012; Edited August 2012; Revised June 2013)

Background Purpose

The Commission seeks to assure that those who engage in accreditation activities make every effort to protect the integrity of accrediting processes and outcomes. The intent of the Commission is to:

- maintain the credibility of the accreditation process and confidence in its decisions;
- assure that decisions are made with fairness and impartiality;
- assure that 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 are minimized;
- make all of its decisions in an atmosphere which avoids even the appearance of conflict of interest; and
- provide the means to disclose any existing or apparent conflict of interest.

Policy

A conflict of interest is any circumstance in which an individual's capacity to make an impartial and unbiased decision may be affected because of a prior, current, or anticipated institutional/district/system affiliation or other significant relationship(s) with an accredited institution/district/system or with an institution seeking initial accreditation, candidacy, or reaccreditation reaffirmation of accreditation.

The Commission seeks to assure that its decisions on institutions and on all other matters before the Commission are based solely on professional judgment and an objective application of its Eligibility Requirements, Accreditation Standards, and Commission policies. Accordingly, the Commission takes all necessary measures to assure that conflicts of interest and the appearance of conflicts of interest on the part of Commissioners, evaluation team members, consultants, administrative staff, or other agency representatives are avoided.

The Commission expects that all individuals associated with the Commission, whether as Commissioners, evaluation team members, consultants, administrative staff or other agency representatives, will display personal and professional integrity and guard against conflicts of interest, or the appearance of conflicts of interest, by adhering to this Policy and by refusing any assignment where the potential for conflict of interest exists.

Policy Elements

Each Commissioner, evaluation team member, consultant, member of the Commission administrative staff, and other agency representative is asked to review this Policy and consider potential conflicts of interest in his/her proposed assignments.

The following interactions with an institution/district/system have been determined to be of the type that constitute a conflict of interest or the appearance thereof, normally within the last five years:

- a. ~~any~~ current or prior employment at the institution/district/system being evaluated;
- b. candidacy for employment at the institution/district/system being evaluated;
- c. ~~any~~ current or prior service as a paid consultant or other business relationship with the institution/district/system being evaluated;
- d. ~~any~~ written agreement with an institution/district/system that may create a conflict or the appearance of a conflict of interest with the institution/district/system;
- e. personal or financial interest in the ownership or operation of the institution/district/system;
- f. close personal or familial relationships with a member of the institution/district/system;
- g. other personal or professional connections that would create either a conflict or the appearance of a conflict of interest; or
- h. receipt of any remuneration, honoraria, honorary degrees, honors or other awards from the institution/district/system.

Notwithstanding the definition of a conflict of interest provided in this policy and in the above list of types of conflicts or potential conflicts of interest, a conflict of interest arising from one of these types of relationships does not go into perpetuity, but normally expires five years after the relationship ends. Nevertheless, the individual is expected to ask him/herself whether the existence of such relationship would in any way interfere with his/her objectivity, and, if the answer is in the affirmative, he/she is expected to refuse the assignment or recuse him/herself from the deliberations related to the *case issue* that caused the conflict of interest.

The following interactions with an institution/district/system have been determined to be of the type that do not constitute a conflict of interest or the appearance thereof:

- a. attending meetings or cultural events on a campus;
- b. having infrequent social contact with members of institutions/districts/systems;
- c. making a presentation at an institution on a one-time, unpaid basis, with no sustained relationship with the institution; or
- d. fulfilling a professional assignment with members of an institution on an issue not related to the institution's accreditation.

Avoiding the Appearance of Conflict of Interest

To achieve the purposes of this policy, it is expected that Commission representatives will make every effort to avoid the appearance of conflict of interest, in both formal and informal interactions with members of the field and with the public. Commissioners and

committee members should adhere to the Policy on Professional and Ethical Responsibilities of Commission Members when presented with inquiries or opportunities for public comment on member institutions, ACCJC business or accreditation practices.

Evaluation Team Members

The Commission will not knowingly invite or assign participation in the evaluation of an institution to anyone who has a conflict of interest or the appearance thereof. Team members are required to confirm in writing that they have reviewed this Policy when they are invited to serve on a team.

Institutions being evaluated should review the prospective evaluation team members for potential conflict of interest. The Commission President should be notified immediately if there are conflicts of interest or any concerns that there might be conflicts of interest.

During the period in which the visit is occurring and Commission action is pending, evaluation team chairs and team members are expected to refrain from any of the above listed situations of potential conflicts of interest with an institution for which they have been an evaluation team member.

Commissioners

A Commissioner is expected to recuse him/herself from any deliberation or vote on decisions regarding individual institutions where any of the conflicts of interest listed above exist. A Commissioner who served on the most recent evaluation team of an institution being considered must recuse him/herself. Any such potential conflict of interest shall be reported to the Commission in advance of the deliberation and action and shall be recorded in the Commission minutes.

A Commissioner who is uncertain regarding a possible conflict of interest may recuse him/herself, or *abstain from voting on decisions regarding the institution*, in which case there is no requirement to disclose the nature of the contact(s) for review by the Commission. Alternatively, the Commissioner may disclose the nature of the potential conflict of interest for review by the Commission. The Commission shall then determine in all such cases by majority vote whether the situation raises a conflict of interest or the appearance of conflict of interest. If the Commission determines that the situation raises a conflict, the affected Commissioner will be recused from the deliberations of the case that caused the conflict.

In the case where a Commissioner or the Commission President believes that a Commissioner may have a conflict of interest or the appearance of conflict of interest that the Commissioner has not acted upon, that other Commissioner or the Commission President should bring the conflict of interest or the appearance of conflict of interest to the attention of the Commissioner and give him/her an opportunity to recuse him/herself from the deliberations of the case that caused the conflict. If the matter is not resolved, the other Commissioner or the Commission President may bring the matter to the attention of the full Commission, which will then consider the matter and determine by majority vote on whether the situation raises a conflict of interest or the appearance of conflict of interest. If the Commission determines that the situation raises a conflict, the affected Commissioner will be recused from the deliberations of the case that caused the conflict.

Commission decisions regarding any issue raised relating to conflict of interest shall be noted in the minutes.

At no time during their appointment as Commissioners, should Commissioners consult with institutions on matters of accreditation for compensation.

Commission Staff and Consultants

During the period of Commission employment, Commission staff members, including consultants, are expected to refrain from connections and relationships with candidate or member institutions which could represent a conflict of interest. In the case where a Commissioner or another Commission staff believes that a Commission staff member may have a conflict of interest or the appearance of conflict of interest that the staff member has not acted upon, that Commissioner or the other Commission staff should bring the conflict of interest or the appearance of conflict of interest to the attention of the Commission President. The Commission President will determine whether the situation raises a conflict of interest or the appearance of conflict of interest. If the Commission President determines that the situation raises a conflict, Commission staff will be removed from the assignment that caused the conflict.

Commission staff may not engage in private consulting or employment with, nor accept honoraria, or honorary degrees from member institutions. Commission staff may engage in such arrangements with outside organizations or institutions other than member institutions only with the approval of the Commission President. The Commission President may engage in such arrangements only with the approval of the Commission Chair.

Suspension or Removal

When a conflict or apparent conflict of interest arises, the Commission President or Commission by majority vote may direct that the involved role or behavior of the affected individual (Commissioner, evaluation team member, consultant, administrative staff member, commission representative) shall cease immediately. When a conflict cannot be resolved by recusal or immediately ending the affected individual's role or behavior that created the conflict or perception of conflict, then:

- a. the Commission President, in case of an Evaluation Team Member, Consultant, Administrative Staff Member or other Commission Representative, may elect to suspend or remove the affected individual or take such other action as is deemed appropriate;*
- b. or the Commission by majority vote, in the case of a Commissioner, may elect to suspend or remove the affected individual or take such other action as is deemed appropriate.*

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Errata
to the Complaint and Third Party Comment
Submitted April 30, 2013 to the ACCJC
by the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, et al.

Page / Line # on PDF	From	To
14: Line 19	Evidence indicates the team was not told it need not do so, and it did not do so.	Evidence indicates the team was not told it need not do so, and it did not do so.
94: Lines 3, 5, and 7 101: Line 19	lack of citation	we did not give a citation for the two powerpoints which have the scales of justice - they are: http://www.acbo.org/files/Conference/2011%20Fall%20Conferece/Accreditation%20Overview.pdf http://www.accjc.org/wp-content/uploads/2013/01/CCLC-ETW_Accreditation-and-Effective-Trusteeship_1-26-13.pdf
95: Line 14	CCSF entered the political arena	CCSF ACCJC entered the political arena
123: Line 5	One day is obviously sufficient	One day is obviously <u>in</u> sufficient
126: Line 12	increasing prescriptive	increasing <u>ly</u> prescriptive
127: Line 4	as district obligations	as a district's obligation

127: Line 15	Reaccreditation Letter to CCSF	<u>Reaffirmation of</u> Accreditation Letter to CCSF
140: Line 7	August 2006	August 2006 <u>2005</u>
148: Line 5	Attachment GASB 1, Memo, June 14, 2010, p. 1	Attachment GASB + <u>3B</u> , Memo, June 14, 2010, p. 1
169: Line 11	CCSF indicated the District	CCSF ACCJC indicated the District
172: Line 23	March 30, 2012	March 30 <u>26</u> , 2012
178: Line 27	ACCJC's reputation for being anti-union is reaffirmed by ACCJC	ACCJC's reputation for being anti-union is reaffirmed by ACCJC Beno
180: Line 3	"Kern was 93 percent in 2011-2012, Pasadena was 90 percent in 2011-2012 ¹⁷¹ Modesto Junior College was at 97% of the college budget"	" <u>West</u> Kern was 93 percent ..."
209: Line 17	Since the "crack down" on accreditation that started in the early 2000s, at least 196 administrative positions that deal exclusively with accreditation matters have been created at ACCJC member institutions	Currently there are at least 196 administrative positions that deal exclusively primarily with accreditation matters in the California community college system.
235: Line 6	"... at the CCLC conference in February 2013 ..."	"... at the CCLC conference in February <u>January</u> 2013 ..."
246: Line 3	The Standard was	The Standard was

248: Line 28	These threats are chill	These threats are chill
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Substantive Changes or Additions

1. Kinsella served on a team not mentioned or counted as to him at one point, but noted and counted at note 207: check for one time left out?

Bakersfield College Oct. 22-25, 2012 The Report notes it has “fully funded its Other Post Employment Benefits (OPEB) fund ...”

2. See above at p. 209

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