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Submitted by First Class U.S. Mail and Electronic Mail

The Accrediting Commission for Community and Junior Colleges
10 Commercial Boulevard, Suite 204
Novato, CA 94949

U.S. Dept of Education
Post Secondary Education, Accreditation Group,
1990 K St. NW
Washington DC 2006

Re: Complaint Alleging Violations of Federal Requirements for Recognition and Third Party Comment in Regard to the ACCJC

Dear ACCJC and U.S. Department of Education, Post Secondary Education, Accreditation Group:

I. Introduction

This Complaint and Third Party Comment is submitted by the California Federation of Teachers; AFT; AFL-CIO; AFT Local 2121, CFT, AFL-CIO; Joshua Pechthalt, Tim Killikelly;, Carl Friedlander, Jim Mahler, Alisa Messer; Gus Goldstein; Allan Fisher; Rodger Scott, and Ed Murray (referred to herein as “complainants”).

The Complaint is filed against the Accrediting Commission for Community and Junior Colleges (“ACCJC”).

The Complaint. Federal law requires that a recognized higher education accreditor “review in a timely, fair and equitable manner, and apply unbiased judgment to, any . . . complaint against itself and take follow-up action, as appropriate, based on the results of . . . its review.” (34 CFR §602.23(c)(3)). ACCJC also has a Complaint Procedure recognizing that complaints may be filed against the ACCJC.

Federal law also allows the public to file complaints against a recognized accreditor, with the Department. (§602.32(b)(3)).

This document constitutes a Complaint against the ACCJC under federal law and the ACCJC policy, filed concurrently with both the ACCJC and the Department.

The Third Party Comment. Under Federal regulations, the public may submit comment to the Department of Education in regard to an accrediting agency's continued recognition by the Department. (34 CFR §602.32(b)(2)). This document is also submitted as such a Comment, in regard to the Department's consideration of continued or renewed recognition of the ACCJC.

II. Summary of Complaint

A. Background

The Agency is the only accreditor for California community colleges currently recognized by the Department. The California community college system includes 72 community college districts, which include 112 community colleges. The Complainant CFT represents, through its local unions, the faculty at 30 of these 72 community college districts. These 30 districts include more than 50 California community colleges. Complainant AFT Local 2121 represents the 1,500 academic employees employed by City College of San Francisco.

Complainant Joshua Pechthalt is the President of the California Federation of Teachers. Tim Killikelly is the President of AFT Local 2121. Carl Friedlander is the past president of the Community College Council. Jim Mahler is the President of The AFT Guild, Local 1931, representing the employees, both academic and classified, of the San Diego, and Grossmont-Cuyamaca Community College Districts. He is also the President of the Community College Council of the CFT, which consists of all CFT community college locals. Complainants Alisa Messer; Gus Goldstein; Allan Fisher; Rodger Scott, and Ed Murray are all former presidents of AFT 2121, and each of them is or has been employed as an academic employee of City College of San Francisco.

Most of the Complainants filed previous complaints with the Department, including a detailed complaint from the CFT, AFT 2121 and others on or about April 30, 2013.

On January 28, 2014 the Department issued its decision on the renewal of recognition of WASC/ACCJC. (Letter, Acting Assistant Secretary Brenda Dann-Messier to Barbara Beno, dated Jan. 28, 2014). The Department continued ACCJC's recognition for the time necessary to permit ACCJC to achieve compliance, and for a final recognition decision. ACCJC was afforded this time to come into compliance with 15 federal regulations.

ACCJC has been under scrutiny because it has become increasingly punitive, issuing an extraordinary number of sanctions to nearly 70% of California's community colleges during the past several years. ACCJC has been the subject of numerous complaints filed with the Department, and three lawsuits filed in the California courts. A Joint Legislative Audit Committee, appointed by the California Legislature, has examined ACCJC, and the Legislature

has considered and enacted legislation to address actions and processes of the ACCJC.

B. This Complaint

This Complaint alleges that the ACCJC has engaged, and continues to engage, in a number of violations of federal requirements, such as to indicate it lacks the capacity, competence and knowledge to serve as a recognized reliable accreditor.

This Complaint alleges that the ACCJC is out of compliance with the following regulations:

§602.14
§602.14(b)(3)
§602.15(a)(1)
§602.15(a)(2)
§602.15(a)(6)
§602.16(a)(v)
§602.18(a)
§602.18(b)
§602.18(c)
§602.18(d)

These complaints involve ACCJC's procedures, policies and actions which adversely affect all California community colleges accredited by the ACCJC, and unfairly place at risk the continued accreditation of these California institutions, thereby threatening the opportunities of hundreds of thousands of students to continue their education at California community colleges. Each complainant is directly aggrieved by the acts and omissions of the ACCJC in that:

(1) ACCJC acts inconsistency in determining Financial Capacity of colleges for accreditation evaluations puts at risk the continued accreditation of each of California's 112 community colleges, and interferes, or threatens to interfere, with the continued employment, and/or compensation, of tens of thousands of faculty employed at these colleges; and, interferes, or threatens to interfere, in the rights of labor organizations and employees under the Educational Employment Relations Act (Cal. Government Code section 3540 *et seq.*), and interferes, or threatens to interfere, in the educational opportunities of hundreds of thousands of students. This violates section 602.18(b).

(2) ACCJC lacks a reasonable basis for determining that information it relies upon for making accrediting decisions is accurate. In particular its "average norm" for college expenditures for personnel costs, which it has announced is 80%, is not accurate. In reality, the statewide average is higher, and the average for urban-located colleges and large colleges is even greater. The ACCJC's reliance on an inaccurate average violates section 602.18(d).

(3) ACCJC applies a norm to assess fiscal stability while looks at the percentage of a college's unrestricted general fund which is spent on employee compensation (wages and benefits). ACCJC applies the same norm, 80%, regardless of the scope of operations of the college. However, statistics published by the Chancellor's Office of the California community colleges confirms that the percentage figure is higher for colleges which have a greater scope of operations, or which are located in urban areas. In using the same norm of 80%, ACCJC violates 602.16(a)(v).

(4) ACCJC's lack of an adequate, competent and knowledgeable administrative staff interferes in the consistent application of fair evaluation standards and requirements, and threatens the continued accreditation of California's community colleges, and the educational opportunities of hundreds of thousands of students. This violates section 602.15(a)(1) and (2).

(5) ACCJC's failure to have written and published specifications of requirements for obtaining good cause extensions of the "two-year rule", and ACCJC's basing of decisions to extend the two-year rule on policies which are not published, threatens the continued accreditation of California's 112 community colleges, and the educational opportunities of hundreds of thousands of students. This violates section 602.18(a) and (c).

(6) ACCJC's lack of an adequate, competent and knowledgeable administrative staff interferes in the consistent application of ACCJC standards for extending the time for colleges to come into compliance with ACCJC standards and requirements. This violates section 602.15(a)(1) and (2).

(7) ACCJC's failure to adopt and implement guidelines and controls to assure that each member of its decision-making bodies, including its Appeals Panel, avoid actual or apparent conflicts of interest, interferes in the rights of the residents of San Francisco, 80,000 students of City College of San Francisco, and more than 1,500 faculty, and the students and faculty of the community colleges throughout the State, to have fair accreditation reviews by the ACCJC, and to assure that the regional accreditor for California has integrity. This violates 602.14(b)(3), 602.14, and 602.15(a)(6).

(8) ACCJC's adoption of an Appeals procedure which fails to afford its hearing panel sufficient authority to make independent decisions violates sections 602.25(f)1(iii), and 602.15(a)(1) and (2).

(9) ACCJC's adoption of a revised complaint policy which does not comply with federal requirements interferes in the rights of the public to submit complaints to the ACCJC, regarding the ACCJC, and violates 602.23(c)93).

Complainants reserve the right to submit further Complaints, Evidence or Comments to the Department, as they deem appropriate.

III. ACCJC's Violations of the Department's Criteria Related to Ensuring Consistency

in Decision-making in Regard to ACCJC’s Standards Related to Fiscal Stability.

Violation # 1: 34 CFR §602.18(b) - ACCJC lacks “effective controls against the inconsistent application of the agency’s standards.”

Violation # 2: 34 CFR §602.18(d) - ACCJC lacks “a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate.”

Violation # 3: 34 CFR §602.16(a)(v) - ACCJC’s standards fail to address the quality of the education provided by California community colleges because they do not assess “fiscal ... capacity as appropriate to the specified scale of operations” of the various colleges it accredits.

Violation # 4: 34 CFR § 602.15(a)(1) and (2) - ACCJC lacks an “adequate administrative staff” to carry out its accrediting responsibilities, and lacks “competent and knowledgeable individuals regarding the agency’s standards, policies and procedures.

The Department’s regulations provide more precisely as follows:

602.18 Ensuring consistency in decision making.

The agency must consistently apply and enforce standards . . . that ensure that the education or training offered by an institution . . . is of sufficient quality to achieve its stated objective for the duration of any accreditation period . . . granted by the agency. The agency meets this requirement if the agency – ...

(b) Has effective controls against the inconsistent application of the agency's standards; ...

(d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate; and

602.15 Administrative and fiscal responsibilities.

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–

(a) The agency has–

(1) **Adequate administrative staff and financial resources to carry out its accrediting responsibilities;**

(2) **Competent and knowledgeable individuals**, qualified by education and experience in their own right and trained by the agency on their **responsibilities, as appropriate for their roles, regarding** the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and **make its accrediting and preaccrediting decisions . . .** (emphasis added).

Federal law, 20 USC section 1099b(5)(E) requires that an agency's standards for accreditation include "**Fiscal and administrative capacity appropriate to the specified scale of operations**" of a college. (Emphasis added.) The Department's regulations similarly indicate that an agency satisfies federal requirements when its accreditation standards address the quality of an institution in the area of "**Fiscal and administrative capacity as appropriate to the specified scale of operations**" of a college. (34 C.F.R. §602.16(a)(v), emphasis added.)

In addition, a recognized accrediting agency must have an adequate administrative staff, and competent and knowledgeable officials, to carry out its accrediting functions.

Summary of These Alleged Fiscal Standards Violations

Since at least 2012, and continuing to date, the ACCJC has based some of its accrediting decisions involving colleges' fiscal capacity, "stability" or "resources" on a standard or "norm" which requires, as a measure of fiscal stability, that a college spend 80% of its unrestricted general fund budget on compensation (wages and benefits) for employees. ACCJC has applied this norm regardless of the scale of operations of the colleges it accredits, or whether a college is located in an urban or rural area.

The ACCJC has applied this norm inconsistently. In some instances, it has found that colleges meet ACCJC's fiscal standards even though they are spending more than 80% for employee compensation. In the cases of other colleges, ACCJC has inconsistently concluded that colleges expending more than 80% were deficient in meeting ACCJC financial standards. In other words, ACCJC has engaged in the disparate and inconsistent application of this norm, thereby violating section 602.18(b).

In addition, ACCJC's long-serving commissioner and current Commission Chair Steven Kinsella, has insisted that the 80% norm is the "average" among the colleges. In fact, it is nowhere near the average, which is presently over 83% for all California community colleges. In applying an inaccurate "average" the Commission violates section 602.18(d), which indicates the Commission must have a reasonable basis for determining information it relies on in making accreditation decisions, is accurate.

Finally, ACCJC's mistaken reliance on an inaccurate "average" and its inconsistent application of this "average norm" indicates the Commission administrative staff is not adequate, and that it does not have sufficient competent and knowledgeable individuals who are qualified

to serve as a reliable accreditor.

A. The ACCJC's Failure to Have "effective controls against the inconsistent application of the agency's standards; ..."

For more than 10 years, the ACCJC has adopted and applied standards concerning Financial Resources of the institutions it accredits. The 2014 edition of ACCJC's Handbook devotes two pages to the Financial Resources standard. (A copy is Attachment 1.) These standards are set forth in relatively general terms. For instance, these include:

9. The institution has sufficient cash flow and reserves to maintain stability, support strategies for appropriate risk management, and, when necessary, implement contingency plans to meet financial emergencies and unforeseen occurrences.
10. The institution practices effective oversight of finances, including management of financial aid, grants, externally funded programs, contractual relationships, auxiliary organizations or foundations, and institutional investments and assets.

These published standards make no reference to the 80% norm. Instead, the 80% norm is apparently passed along orally by ACCJC to visiting team members and team chairs, and to Commissioners. The ACCJC also has an "eligibility requirement" involving financial resources, but it too makes no mention of this norm.¹

In a public trial held in San Francisco Superior Court on October 31, 2014, ACCJC Vice Chairperson Steven Kinsella admitted that the 80 % norm played a significant role in ACCJC's disaccreditation of City College. He testified that

"The normal average [personnel cost] is 80 percent." (Tr. 952:6)²

¹ See Current Eligibility Requirement 17 which states that an institution must document a: funding base, financial resources and plans for financial development adequate to support student learning effectiveness, and to assure financial stability. (ACCJC Eligibility Requirements, in effect through Fall 2015.) A revised eligibility requirement, effective in 2016 provides similarly, that the institution must document a funding base, financial resources and plans for financial development adequate to support student learning programs and services, to improve institutional effectiveness, and to assure financial stability. (Standard III.D.1)

²Copies of each cited transcript reference are included in Attachment 2.

He also stated that CCSF needs to “come in line with 80 percent . . .” (Tr. 952:23)³

ACCJC is out of compliance with the Department’s regulations because it inconsistently applies this 80% norm.

ACCJC’s commissioners applied this norm to disaccredit City College. Several of ACCJC’s Commissioners testified in court in October 2014 that they disaccredited CCSF because it exceeded the 80% norm. For example, former commissioner Marie Smith testified that, “. . . with 92 percent of the operational budgets going toward salaries and benefits, that eight percent was insufficient to run the operations of the college, and that the college had not been able to balance their budget in previous years.” (Tr. 795:4-9).

Former commissioner, Sharon Whitehurst-Payne testified that she voted to terminate CCSF’s accreditation. She said that she, “. . . voted that way because, frankly, I was appalled at the fact that they had a financial situation that was not sustainable – and the one piece that always stood out in my mind was that 93 percent of their revenue – their income was going towards salary and the compensation package – and that you have to be able to do some other things other than pay salaries and – and compensation base.” (Tr. 882:17-23).⁴

ACCJC Commissioner Tim Brown, who works at Riverside City College, said he voted to disaccredit San Francisco because he was concerned about the “amount of the General Fund that was committed to faculty salaries.” (Trial Tr. 918; 10-15)

³ In a public presentation in 2013, ACCJC president Dr. Barbara Beno asserted, inconsistently, that the norm is not 80%, but is 83 or 84%::

You know, I think that financial management starts with Board policies and Board behaviors that do two things. One is limit the expenditures on salaries and benefits for employees to something like 82 83%, ah, and ah, leaving then, the 17% 18% of the total revenues to be allocated for buildings, and building maintenance, for equipment, for other needs other than employee costs. (See page 5, Attachment 3 hereto)

⁴ Additionally, the importance of this unwritten rule was illustrated when Ms. Whitehurst-Payne added that she wanted to see CCSF go back to its unions and say, “This is not sustainable, and that we need to—we want this institution to survive . . . Let’s come together and sit down and figure out how we can reduce this percent down from 93 percent . . . And if we have to all take a pay cut, then we will do that . . . That’s what I expected, that people would have said the institution’s survival is more important than re – than my receiving whatever my X number of dollars was.” (Trial Tr. 879:9-898:1). This comment proved that Whitehurst-Payne, as an ACCJC commissioner, lacked knowledge of all of the evidence presented by CCSF to ACCJC, when she voted to terminate its accreditation. CCSF had taken several faculty pay cuts and had not had a raise in many years.

However, many of ACCJC's commissioners, including Mr. Brown, are or were employed at California colleges which did not meet this norm (see table, below). For instance, Riverside City College was at 84.5% in 2013, and 87.9% in 2012. During the 2011-2012 school year, a majority, or 45 of California's 72 community college district's exceeded 83%.⁵ While only two (San Francisco and West Kern) exceeded 90%, a total of 30 exceeded 86%. And for that same year, 60 of the 72 districts exceeded 80%. The statewide average for the community colleges was 83.9%. ACCJC also failed to take into account the size of college districts in comparable circumstances. For instance, in the San Francisco Bay Area the average cost of personnel as a percentage of the unrestricted general fund budget was 86.4% in 2012. The average community college expends more than 83% of its unrestricted reserve for personnel costs. Large colleges (in terms of enrollment) and colleges located in large urban areas (e.g. Los Angeles, San Francisco or San Diego), are generally closer to 90%.

The Department lists "Fiscal and administrative capacity as appropriate to the *specified scale of operations*." (602.14(a)(1)(iv)). ACCJC's Commission applies the agency's standards on fiscal capacity inconsistently, and its norm fails to take into account the scope of operations of the many colleges it accredits. Furthermore, as demonstrated in their trial testimony, ACCJC's commissioners are largely unfamiliar with the standards or norms they are called upon to apply.

The following table indicates a few of the many colleges which were accredited by ACCJC, even when they expended more than 80% of their general fund unrestricted budget for personnel costs. Taft College (West Kern Community College District) spent 93% on personnel costs in 2011-2012, but this fact was not mentioned in the Team Report. Pasadena was at 90% in 2011-2012 and Modesto Junior College was at 97% that same year. In neither case did the team report reference these findings. None of these colleges were put on Show Cause status, nor was their accreditation terminated. Taft was placed on Warning in Spring 2010 through Spring 2012, for other reasons. Modesto was placed on Probation in Spring 2012 through Spring 2013, for other reasons. And Pasadena was placed on Warning in Summer 2009, for other reasons.

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⁵See Attachment 4 hereto.

Table Showing Personnel Costs⁶

ACCJC Commissioner	Commissioner's position at time of ACCJC's 2013 Decision to Disaccredit CCSF	College(s)/ District Where Commissioner Is/Was Employed	2013 - Percent of college district's unrestricted general fund expended for personnel costs (wages + benefits) in 2013	2012 - Percent of college district's unrestricted general fund expended for personnel costs (wages + benefits) in 2012	Total of credit and non-credit FTES [measure of college capacity]
Timothy Brown	Professor	Riverside City (Riverside Community College District)	84.5%	87.9 %	27,098.17
Marie B. Smith	Retired administrator	College of Marin	86.6 %	86.1 %	4,700.50
		Los Rios	84.5%	86.7 %	55,242.79
Frank Gornick	Chancellor	West Hills	72.6%	75.1%	6,127.55
Steven Kinsella	President	Gavilan	71.9%	78%	5,114.15
Sharon Whitehurst-Payne	Clinical Practice Coordinator	CSU San Marcos	n/a	n/a	n/a
Raul Rodriguez	Chancellor	Rancho Santiago	82.5%	85.7%	37,527.83
	Former Interim President and Vice President	San Jose-Evergreen	84.3%	87.6%	14,364.08
	Former President	Contra Costa	86.1%	86.8%	32,065.39
	Former President	San Joaquin-Delta	84.1%	84.6%	16,336.99
	Former Faculty and Dean	Cabrillo	77.7%	80.4%	10,955.80
Chris Constantin	Former Trustee	West Valley-Mission	78.3%	88%	17,114.83
Sherrill Amador	Former President	Palomar	87.1%	84.4%	19,572.43
Joseph Bielanski	Faculty Institutional Effectiveness Coordinator	Peralta	81.8%	81.5%	21,059.92

⁶The 2011-2012 percentages are from Attachment 4. The Tables for 2012-2013 are found at: http://extranet.cccco.edu/Divisions/FinanceFacilities/FiscalAccountability/DistrictFiscalTrendAnalysis.aspx#08-09_Actual_to_12-13_Budget

It is true that ACCJC is inconsistent in many other aspects of its evaluations of California community colleges. For example, consider Riverside City College. Riverside City was fully reaccredited by a decision made in June 2014 by ACCJC, despite the existence of 11 specific deficiencies in meeting the Standards. Furthermore, ACCJC had engaged in various behaviors comparable to San Francisco City College, yet ACCJC did not cite Riverside City for deficiencies in regard to any of these. These include the following:

- Riverside City College had a “reserve” (actually an “ending fund balance) of 3.8 % of all available funds, and 4.6% of “unrestricted fund revenues,” but it was enough that “the district is taking action to raise its reserve level to be consistent with established board policies. (III.D.3.a.)” Standard III.D.3.a. was not among the 11 standards for which Riverside City was deficient (and still had its accreditation renewed without sanction). Report, pp. 2 and 53; Letter, Beno to Riverside, July 3, 2014) Yet ACCJC inconsistently sanctioned CCSF for allegedly having a “reserve” of 5%.

- Riverside City College had an “actuarial determined liability of \$24.6 million”, the “Annual Required Contribution is \$2.9 million,” and “The District does not have a plan to address this obligation and has not as yet funding any portion of this benefit cost. (II.D.3.d.)” ACCJC did not find this to be a deficiency. (Report, pp. 2, 53; Beno letter of July 3, 2014). ACCJC inconsistently found a deficiency and disaccredited CCSF because it was paying for retiree benefits on the “as you go” plan, and had put away only \$500,000 toward meeting future potential liabilities.

- While ACCJC sanctioned City College of San Francisco for having “old” buildings, it was complimented for having buildings dating to 1916 that were of “advanced age” but “well maintained.”

- ACCJC noted a “discrepancy” in amounts reported by Riverside City as being held in a fund for OPEB obligations. Rather than sanction Riverside, it suggested the District should submit “corrected” financial information to the ACCJC. (Report, p. 51) Inconsistently, ACCJC claimed City College of San Francisco had submitted erroneous information, and indicated there was no method for correcting such a submission.

- ACCJC approved of Riverside City borrowing cash “in amounts adequate to meet its immediate needs. (III.D.2.c.)” ACCJC did not sanction the college for doing this. (Report, pp. 2, 52) ACCJC inconsistently found CCSF deficient for engaging in the same practice. In both cases, this borrowing was necessitated by the “State of California ... not hav[ing] sufficient cash resources to pay community colleges all of the money allocated to them ... (III.D.2.c.)” (Report, pp. 2, 52) However, CCSF was found deficient for borrowing funds for the same reason.

So, inconsistency afflicts ACCJC in regard to many of its decisions. But even though its inconsistency regarding the 80% norm is but one such inconsistency, it provides ample proof that ACCJC fails to satisfy section 602.18(b).

B. ACCJC lacks “a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate.”

As noted above, ACCJC Chair Steven Kinsella’s testimony that the “normal average is 80 percent” of a college’s unrestricted general fund going for employee compensation (Tr. 952:6), is simply wrong. The actual statistics issued by the State of California for the last several years indicate the average is closer to 84%, and that for large institutions, and urban areas, the percentage is close to 90%. Such a significant error by Mr. Kinsella demonstrates that ACCJC lacks a reasonable basis for determining the information it relies upon is accurate. Accordingly, ACCJC violates 602.18(d).

C. ACCJC’s Fails to Assess Fiscal Capacity Appropriate to the Specified Scale of Operations of the Colleges it Accredits

Steven Kinsella testified on October 31 that City College San Francisco did not meet the average “norm” of 80%, a norm which ACCJC uses to measure fiscal capacity based on the percentage of the unrestricted general fund that it expended for employee compensation (wages and benefits). While this figure may be appropriate to a small college like Gavilan, where he is president, it is not appropriate for a large, urban college with a broad scope of operations such as City College of San Francisco.

The two colleges are not comparable. Tiny Gavilan College had credit FTES of 4556.24 and non-credit FTES of 557.92 in 2011-2012, for a total of 5114.15. In contrast, City College of San Francisco had credit FTES of 28259.61 and non-credit FTES of 10096.57, for a total of 36566.28. In other words, in Full-Time Equivalent Students alone, CCSF had more than 30,000 more students as Gavilan. Gavilan College does not even have a chemistry department; it has a single chemistry lab. City College of San Francisco has a huge Chemistry Department, which serves the needs of multiple academic and career programs. It has 12 chemistry labs. During 2011-2012 academic year it taught 1,916 students. Students enrolled in its classes because their majors required chemistry. These included nursing, radiation therapy technology, chemical engineering, and molecular biology. Other students take chemistry as part of a pre-Med major. It taught Tiny Gavilan apparently has two chemistry teachers; City College has about 20, and some of the most advanced chemistry equipment found in any college’s chemistry lab.

While Gavilan college expends about 78% for employee salaries, CCSF, which is more than 7 times as large, expends between 86% and 92%, a reflection of the scope of its academic programs.

As noted above, the Statewide averages for this norm for urban and large colleges are significantly greater than the percentage for tiny rural colleges that lack the scope of programs offered by colleges in San Francisco, Los Angeles and San Diego. ACCJC’s rigid application of an 80% norm is a violation of 34 CFR section 602.16(a)(v).

D. ACCJC Lacks Administrative Capacity and Competent and Knowledgeable Individuals to Perform Its Accreditation Responsibilities in Violation of 602.15(a)(1) and (2)

ACCJC’s reliance on the arbitrary and unverifiable 80% norm demonstrates that ACCJC lacks the competence, knowledge and capacity expected of a federally-recognized accreditor.

ACCJC, like any recognized accreditor, is expected to employ competent and knowledgeable individuals, and adequate administrative staff, to understand federal requirements and agency standards. It’s failure to prevent the inconsistent application of the fictitious “average” of 80% confirms that ACCJC lacks competent and knowledgeable individuals and staff, thereby violating 602.15(a)(1) and (2).

IV. ACCJC’s Violation of the Department’s Requirement that an Agency Have Written and Published Specification of Requirements for Accreditation in Regard to Good Cause Extensions of the “Two Year Rule”

Violation # 5 - 602.18(a) - the ACCJC failed to have written specifications of its “Good Cause” for extension policy, which allows institutions to seek additional time beyond two years to come into substantial compliance with agency standards.

Violation # 6 - 602.18(c) - the ACCJC failed to base its decisions regarding accreditation on the agency’s published standards, by refusing to publish policies affording colleges more than two years to come into substantial compliance with Agency standards.

Violation # 7 and # 8 - 34 CFR §602.15(a)(1) and (2) - ACCJC lacks an “adequate administrative staff” to carry out its accrediting responsibilities, and lacks “competent and knowledgeable individuals regarding the agency’s standards, policies and procedures.

602.18(a), (c)

(a) Has **written specification of the requirements for accreditation** and preaccreditation that include **clear standards for an institution** or program to be accredited;

(c) **Bases decisions regarding accreditation** and preaccreditation **on the agency's published standards**;

602.15(a)(1) and (2)

602.15 Administrative and fiscal responsibilities.

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--

(a) The agency has--

(1) **Adequate administrative staff** and financial resources to **carry out its accrediting responsibilities;**

(2) **Competent and knowledgeable individuals**, qualified by education and experience in their own right and trained by the agency on their **responsibilities, as appropriate for their roles, regarding** the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and **make its accrediting and preaccrediting decisions . . .** (emphasis added).

A. The ACCJC’s Failure to “(a) Have Written Specification of the Requirements for Accreditation . . . That Include Clear Standards for an Institution to Be Accredited; and, the Agency’s Failure to (c) Base Decisions Regarding Accreditation . . . on the Agency’s Published Standards”

The ACCJC has failed to publish **written** standards which allow colleges to obtain “good cause” extensions of the Department’s “two-year” rule. In a January 28, 2008 memo from Dr. Beno, distributed to CEOs and Accreditation Liaison Officers, ACCJC acknowledged that the Department “found that ACCJC did not fully meet the so called two-year rule.” The ACCJC memo stated that the Commission will “be making some changes to its procedures” by, *inter alia*, “creat[ing] a list of reasons that it will consider as a reasonable basis for extending the time permitted for ‘good cause’ and communicate those to the Department ...” (Beno memo to CEOs, etc., January 18, 2008, p. 1)

Complainants strongly support the availability and application of good cause extensions of the two-year rule to meet Commission requirements. There are sound reasons to allow such extensions, given the size and complexity of California’s community colleges, and the volatility of State funding during the Great Recession.⁷

The potential closure of CCSF would have caused “catastrophic consequences” to 80,000 students, 1,500 faculty, thousands of prospective students, and the City of San Francisco

⁷ In a Team Evaluation Report issued by ACCJC Team Chair Steven Kinsella for Riverside City College in or about March 2014, Mr. Kinsella and his team complimented the college for having “maintained financial solvency during ... the Great Recession”, when there were “resultant large reductions in revenues awarded to colleges by the State of California.” (Report, p. 49)

and the Bay Area. ACCJC wrongfully discredited an institution employing 1,500 excellent faculty in more than 60 career programs (including essential programs serving the public health and safety), and 40 academic programs. It tried to interrupt or end the education of 80,000 students, without the means or opportunity to find an alternative education. It attempted to deprive one-quarter of San Francisco's recent high school graduates, of their chosen college.

Yet ACCJC has repeatedly issued good cause extensions to other colleges, but only through a secretive and selective process that has denied consideration to colleges such as San Francisco, which would have easily qualified under the criteria ACCJC identified to the Department.

For purposes of this complaint, we assume that every one of the ACCJC's many extensions was valid. Therefore, to be clear, the complaint here is not that ACCJC has afforded many good cause extensions. Rather, the complaint is that the processes and policies for obtaining good cause extensions are secret, and that some colleges are arbitrarily deprived of this opportunity, at least in part, because, of the lack of clear published procedures and policies. In the case of City College of San Francisco, for example, there is no evidence the college was allowed by ACCJC rules to apply for a good cause extension of the "two-year rule."⁸ Yet in the last 5 years, ACCJC has granted good cause extensions more than 20 times. (See Attachment 6)

In a December 2011 Staff Report, the Department of Education discussed a previous problem from the Department's 2007 staff review of the ACCJC regarding its "good cause" policy. (See Staff Report to the Senior Department Officer on Recognition Compliance Issues, Recommendation Page, Dec. 2011, p. 2) The "good cause" policy is designed to allow colleges more than two years to correct deficiencies, for "good cause." The Department requires that all of its recognized accreditors have such a policy in place. The terms of the ACCJC's new policy were not published by ACCJC, but are mentioned in a Department staff report.

However, despite this background, the ACCJC has never published a "good cause" policy in its policy manuals,⁹ nor made such a policy available to the public, or the constituents of the colleges - students, faculty and staff. There is no evidence that ACCJC has ever advised California community colleges of the terms of its good cause "policy".

⁸ Actually, ACCJC gave CCSF just 9.5 months to "comply" with ACCJC Standards, even though many colleges are given years, if not decades, to comply. There is no procedure under which a college may seek to enlarge the time to two years.

⁹ ACCJC's publishes its standards and requirements, an Accreditation Handbook, manuals for trustees, manuals for teams, quarterly newsletters, and all sorts of special reports. It conducts periodic training for Accreditation Liaison Officers, team chairs, evaluation teams, and others. Yet not once has it published the good cause criteria, or any procedure for seeking a good cause extension.

The Department staff explained in 2011, that while ACCJC’s “Policy on Public Disclosure” allowed the agency to grant good cause extensions to institutions, the grounds for granting a “good cause” extension of the “two-year” rule remained unclear.¹⁰

According to the Department’s staff review, the ACCJC offered the Department the following explanation that “. . . the agency could consider granting an extension for good cause to an institution where the deficiencies ‘are not directly and immediately affecting educational quality. . . .’” and further provided the Department with *four specific criteria* for granting good cause. These four criteria are distinct, and a college may qualify for an extension under any one or more of the four.

While these four criteria are listed in the Department’s 2011 Staff Report concerning the ACCJC, the ACCJC has still never published its good cause policy setting forth these grounds, for the benefit of California’s community colleges or the public, nor has it incorporated the four criteria it claims to use into another already existing policy.

The member institutions of the ACCJC and the public have a right to know about, and to physically have a copy of, the agency’s good cause policy.

ACCJC has not published, and there is no evidence that it has, any *procedure* under which its member colleges may apply for “good cause” extensions. Nor has a single document been located in which ACCJC explained whether it had considered, granted or denied a good cause extension, except for a handful of cryptic comments in some of Dr. Beno’s action letters. None of those letters indicate the length of the good cause “extension,” and many do not explain when it was granted. Although some letters refer to reasons for granting an extension, rarely if ever do those reasons coincide with the four grounds ACCJC described to the Department in 2007-2008.

The Department’s regulations state that, “if the institution . . . does not bring itself into compliance within the specified [two year] period, the agency must take immediate action unless . . . for good cause [it] extends the period for achieving compliance.” (34 CFR §602.20(b)). The Department of Education’s December 2011 “recommendations” to ACCJC declare that ACCJC “could consider granting an extension [of the two years] for good cause . . . where deficiencies ‘are not directly and immediately affecting educational quality, but have longer term direct or indirect effects on educational quality or integrity . . .’” Other reasons include the appointment of a State trustee, or a decision to seek assistance from an outside consultant group such as the State’s Fiscal Crisis Management and Assistance Team (“FCMAT”). ACCJC sometimes only mentions years later, that it had previously given a college a good cause extension.

¹⁰The USDE’s regulations allow that the two-year period to satisfy Standards may be extended for good cause. Thus, “if the institution . . . does not bring itself into compliance within the specified [two year] period, the agency must take immediate action unless . . . for good cause [it] extends the period for achieving compliance.” (34 CFR §602.20(b)).

The four good cause reasons ACCJC represented to the Department fit the City College situation. However, there is no evidence that ACCJC ever considered CCSF for a good cause extension, or that CCSF was aware it could apply for a good cause extension. This suggests a deliberate violation of federal requirements. Further, despite numerous requests from faculty and others, ACCJC has refused to provide a copy of its good cause policy. As far as we can determine, only the Department of Education may have a copy.

In summer 2013, when the agency's commission voted to disaccredit City College, Dr. Beno engaged in discussions with the Chancellor of the California Community Colleges. These discussions led the Chancellor to believe that by his agency "taking over" City College and displacing its elected board, City College's accreditation would be preserved. (See Attachment 5, Declaration of State Chancellor Brice Harris dated June 12, 2014). This proved to not be the case.

Regardless of whether there was an actual or tacit agreement to preserve CCSF's accreditation, the College should have been able to apply for an extension of time. Accordingly, the agency's long-standing failure to adopt and publish its good cause extension policy illustrates why the agency should no longer be recognized by the Department.

B. ACCJC's Lack of Administrative Capacity, and Competent and its Lack Knowledgeable Staff and Commissioners Violates §602.15(a)(1) and (2)

The "two-year" rule involves a serious issue - the time allotted for any institution or program to come into compliance with standards, when an accreditor has found it not to be in substantial compliance.

In California, there is a dispute over ACCJC's application of its standards, and its procedures. The Department concluded in 2008 that the agency was, at a minimum, inconsistent in applying the two-year rule.

Considerable evidence shows that ACCJC afforded some colleges many years to substantially comply with ACCJC's requirements. (See the Attached Table of Good Cause Extensions, Attachment 6.) At the same time, evidence indicates that ACCJC did not afford other colleges, such as San Francisco City college, the benefit of its secret extension policies.

Had ACCJC transparently applied its authority to extend the two-year period for "good cause," much of this inconsistency might have been avoided. Yet ACCJC stubbornly refused to adopt, publish and implement a formal policy explaining the grounds it would accept to extend the two-year period.

Given ACCJC's failures in this area, the evidence proves that ACCJC lacks the competence, knowledge and capacity to meet the Department's requirements.

V. ACCJC's Violations of the Department's Criteria Related to Conflicts of Interest

Violation #9: 602.14(b)(3) - ACCJC failed to adopt and implement guidelines to assure that each member of its decision-making bodies, including its Appeals Panel, avoids conflicts of interest.

Violation #10: 602.14 - ACCJC failed to create a separate and independent Commission which avoids conflicts of interest.

Violation # 11: 602.15(a)(6) - ACCJC failed to adopt and implement clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by commissioners, team members, Commission administrative staff, and Appeals Panel members.

The Department's regulations provide as follows:

602.14(b)(3)

The agency has established and implemented guidelines for **each member of the decision-making body to avoid conflicts of interest in making decisions.**

602.14(a)(1)(i)

(a) The Secretary recognizes only the following four categories of agencies: An accrediting agency (i) has a voluntary membership of institutions of higher education; (ii) has as a principal purpose the accrediting of institutions of higher education . . . and (iii) **Satisfies the "separate and independent" requirements in paragraph (b) of this section . . . (b) . . . the term separate and independent means that — (3) The agency has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions . . ."**

602.15(a)(6)

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--

(a) The agency has--

(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's--

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

- (iv) Consultants;**
- (v) Administrative staff;**
- (vi) Other agency representatives**

The Department's January 2012 Guidance memo also explains that an accreditor's appeals body is governed by these conflicts requirements. Thus, in regard to guidance for meeting 602.15(a) the Guidelines state,

Review Elements:

In assessing this area, Department staff looks to see if the agency discussed and demonstrated, as appropriate, aspects such as –

- * The agency's written conflict-of-interest policies pertain to its appeals panel as well as to each group listed under (a)(6) (USDE Guidance Memo, p. 26)

The Guidance Memo also provides that these elements apply to an agency's appeals body,

An entity is considered a decision-making body if it makes final decisions for the agency on . . . accreditation status, including appeals decisions. (*Id.*, p. 19)

ACCJC is violating, and has violated, each of the regulations cited above. It has done this even though it was warned by the Department about its lack of compliance with the Department's criteria related to conflicts of interest in August 2013, and December 2013. ACCJC's various bodies continue to possess actual or apparent conflicts of interest, thereby confirming the agency's inability to adopt effective processes to identify and prevent actual or apparent conflicts of interest. These violations include the following:

1. The ACCJC has not established and implemented guidelines for each member of its decision-making body to avoid conflicts of interest in making decisions, and thereby remains out of compliance with 602.15(a), 602.14(b)(3) and 602.14(a)(1)(i).
2. The ACCJC continues to lack clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's--
 - (i) Board members;
 - (ii) Commissioners;
 - (iii) Evaluation team members;
 - (iv) Consultants;
 - (v) Administrative staff

Thus, ACCJC fails to satisfy 602.15(a)(6). ACCJC has shown that it is incapable of satisfying this criteria.

The facts concerning ACCJC's failures in regard to these "conflicts" criteria are

summarized below:

A. ACCJC’s 2014 Appeals Panel Had Serious Conflicts of Interest, Establishing That ACCJC Lacks Effective Controls Against Conflicts of Interest

On July 3, 2013, the ACCJC announced the disaccreditation of City College of San Francisco. As California’s premier community college, with more than 80,000 students, more than 60 high-quality vocational programs, an academic program which ranked high on the State’s objective measures of student success, and as the only community college in San Francisco, this action has led to enormous controversy, close examination of the activities of the ACCJC, and three lawsuits. The first of these went to trial in October 2014, and is awaiting a decision. Meanwhile, a State court injunction against the disaccreditation of City College remains in effect. The ACCJC has been the subject of numerous complaints from various individuals and organizations. Additionally, the College was taken over by the State of California, who displaced the elected governing board, and installed a State-trustee to run the College.

The controversy involving City College has been the subject of intense public scrutiny, and the USDE has found ACCJC to not comply with several requirements for continued recognition. In the context of a pending review by the USDE, it is therefore shocking that ACCJC continues to display the same intransigent disregard for federal regulations. Of particular concern is how the ACCJC managed to appoint an Appeals Panel riven by serious conflicts of interest.

City College filed an appeal of its disaccreditation on or about March 4, 2014. It was “formally received” by ACCJC on or about March 12, 2014. In March, ACCJC appointed a five-person hearing panel. CCSF filed a Motion to disqualify at least two members of the Panel, and after briefing on April 9, 2014, the Motion was denied. The person or persons denying the motion has not been publicly disclosed by the ACCJC. The ACCJC has treated the motion, and the resulting decision, as confidential.

The Appeals Panel heard the case on May 20 and 21, 2014. ACCJC itself was represented by legal counsel and called witnesses. On June 13, 2014, the Appeals Panel issued a written decision rejecting CCSF’s appeal.

As outlined above, under federal regulations, the Hearing Panel that evaluated CCSF’s appeal was supposed to be “independent” of the ACCJC, which included having no actual or apparent conflicts of interest. Despite the high stakes and intense scrutiny summarized above, ACCJC appointed an appeal panel in which every appointee had an actual or apparent conflict of interest. The appointed panel was also not free from bias. The Hearing Panel thus violated federal regulation 602.14(b)(3) and 602.15(a)(6).

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1. The Commission’s Executive Committee Selected the Panel, Which Then Heard and Weighed the Testimony of Executive Committee Members

The Hearing Panel consisted of the following five members: William “Bill” McGinnis, Joseph Richey, Margaret Tillery, Erlinda Martinez, and Thomas McFadden. The Panel was appointed by ACCJC’s Executive Committee, consisting of the Commission’s Chair, Vice Chair, and Chair of the Personnel and Budget Committee. (ACCJC Bylaws, Article IX, Section 1 available at www.accjc.org). In Spring 2014, ACCJC’s Executive Committee members were Sherrill Amador, Steven Kinsella, and Frank Gornick. During the two-day long Panel hearing, the Commission called five witnesses, all of them having direct involvement in the ACCJC. The witnesses called were commissioners Frank Gornick, Steven Kinsella, and Chris Constantin, past commissioner Marie Smith, and Vice President Krista Johns. (Decision, p. 2).

In other words, **the Panel heard and determined the weight and credibility of the testimony of two of the three commissioners who appointed them to the Hearing Panel.** Assuming that ACCJC compensated the Hearing Panel for expenses or service, the panelists were financially benefitted by two of the Commission’s five witnesses.

2. Hearing Panel Chair William “Bill” McGinnis Had a Conflict of Interest and Was Not Independent of ACCJC

ACCJC’s appointment of the Chair represented an actual conflict of interest, as he has a financial interest affected by the ACCJC.

Hearing Panel Chair William “Bill” McGinnis is a trustee at Butte Community College District, which is accredited by the ACCJC. Mr. McGinnis has a close relationship with the ACCJC, and particularly its chair, Dr. Barbara Beno.

Mr. McGinnis has been periodically co-presenting alongside ACCJC President Dr. Barbara Beno and other ACCJC personnel, at various conferences which have addressed accreditation and the role of trustees. (Attachments 7,8 and 9). There seems little doubt that Dr. Beno or other ACCJC executives requested his participation with them. In 2012, Bill McGinnis admitted that he received a salary from ACCJC as a technical consultant to the ACCJC, in a conflict of interest form he filed with Butte Community College District. (Attachment 10).

Accordingly to public information, Mr. McGinnis was beholden to Dr. Beno and the ACCJC for paid compensation he reportedly received from a third party in Spring 2012. It was during this time that, according to school board minutes, Dr. Beno recommended to the Redwoods Community College District, which ACCJC had just placed on Show Cause sanction, that it employ Mr. McGinnis as a consultant to give them a presentation on governing board leadership and accreditation. The Redwoods District then hired Mr. McGinnis. On May 1, 2012, Mr. McGinnis presented his guidance to the Redwoods college trustees, at a public board

meeting. Redwoods records show they paid Mr. McGinnis \$2,000 for his services. (This information is publicly available on the website of Redwoods. See Attachment 11). On March 29, 2014, McGinnis, again according to Redwoods records, returned to Redwoods and gave another presentation. It remains unclear whether Mr. McGinnis received any additional compensation from Redwoods for this March event.

A week after ACCJC placed CCSF on Show Cause sanction over its “leadership,” McGinnis and Dr. Beno gave a presentation on accreditation at a board meeting held on July 10, 2012. (See: http://ccsf.granicus.com/MediaPlayer.php?view_id=2&clip_id=110).

There is also evidence from a newspaper article, that Mr. McGinnis had prejudged CCSF’s complaint. (Attachment 12). This article raises at least a suspicion of prejudgment and an apparent conflict, and certainly required consideration by the ACCJC.

In addition, at Dr. Beno’s request and due to the Department of Education’s “findings on the CFT Complaint,” (Attachment 13, Beno October 8, 2013 letter to Chief Business Officers), Mr. McGinnis wrote a letter to Dr. Beno, that was forwarded to the Department of Education, supporting ACCJC’s pending application for renewal of recognition, after some of the Complainants, and others filed third party comments opposing ACCJC’s continued recognition. (Attachment 14). In his letter McGinnis wrote, “We are committed to the ACCJC standards and endorse the work of the Commission staff and visiting teams to help us in our efforts.” (Attachment 14, p.1).

The foregoing indicates that Mr. McGinnis had an actual or apparent conflict of interest, and should not have been appointed to serve on and Chair the ACCJC Hearing Panel which considered City College’s appeal.

3. Panel Members Richey and Tillery Were Reviewing Their Own Prior Actions Toward CCSF and Were Not Independent of ACCJC

Hearing Panel members Joseph Richey and Margaret Tillery served on the Commission when it decided in 2006 to re-accredit CCSF, without citing any deficiencies. Richey also served on the Commission when CCSF submitted reports to ACCJC in 2007, 2009 and 2010, reports which the ACCJC voted to accept, and issued action letters which did not identify any deficiencies.

A significant issue in City College’s appeal was whether the college had been found to have deficiencies in 2006, 2007, 2009 and 2010. In other words, the Panel was confronted with deciding whether ACCJC had found deficiencies in those years, and whether it had notified City College of any such deficiencies. This meant that Richey and Tillery were presumptively deciding whether the commission they had served on had taken certain contested actions. This also meant that they would have been called upon to decide whether or not they had voted to find City College had deficiencies in 2006, and for Mr. Richey, three other years.

ACCJC has maintained that City College's appeal is confidential. However, the Panel's decision begins by noting that the college's "first contention" on appeal was that it did not receive notice of deficiencies in 2006. (Appeals Decision, p. 4) The Appeals Panel then spends several paragraphs discussing the issue, the Commission's position, and that of the District, before resolving this issue against City College. So, Mr. Richey and Ms. Tillery ruled on actions they were involved in performing in 2006.

On its face this presents an apparent or actual conflict of interest. They should not have been appointed to decide City College's appeal.

Further, in his role as former Chair of the ACCJC, in 2005 Richey wrote a letter to the President of the Peralta Federation of Teachers, an affiliate of the AFT and CFT, threatening him with a defamation lawsuit unless he retracted criticism of Dr. Beno and the ACCJC that he reportedly gave to a small newspaper, the *Berkeley Daily Planet*. (See CFT April 30, 2013, Complaint to USDE, Attachment 7.U.). This letter, a noted part of the prior CFT and AFT 2121 appeal, directly involved Mr. Richey's conduct as former Chair of the ACCJC. This situation further demonstrated that Mr. Richey had an actual or apparent conflict of interest, or bias, which precluded his appointment to the Hearing Panel.

4. Panel Member Erlinda Martinez Supported ACCJC in October 2013 and Was Not Independent of ACCJC

Hearing Panel member Erlinda Martinez, the President of Santa Ana College, signed a letter to Dr. Beno dated October 14, 2013, in which she supported the ACCJC's renewal of recognition application to the Department of Education. Martinez wrote that her letter, "is to be used as an evidentiary document for ACCJC to submit" to the Department of Education. (Attachment 15). The letter also stated that, "the Rancho Santiago Community College District . . . fully supports the decisions, policies, and procedures of the ACCJC." (Attachment 15, p. 1) Clearly Martinez was not independent of the ACCJC. This letter by Martinez was written in response to the complaints previously filed by the CFT in regard to ACCJC's actions towards City College of San Francisco, and other institutions. Thus, Martinez was selected to rule on challenges to ACCJC actions which Martinez had already effectively ventured an opinion of - that they lacked merit.

5. Panel Member McFadden Was a Former ACCJC Commissioner and ACCJC Representative and Not Independent of ACCJC

Hearing Panel member Thomas McFadden previously served as an ACCJC commissioner for two terms from 1999 to 2005. Until June 2013, McFadden served as the "WASC Senior" Commission (Western Association of Schools and Colleges Senior College Commission) representative of the ACCJC. It appears that there is evidence that McFadden pre-judged the controversy around CCSF. A comment, attributed to Thomas McFadden, published as "*EdSource*" defended ACCJC's treatment of CCSF, in response to an article entitled,

“Accrediting commission denies violations over City College of San Francisco.” (Attachment 16, p. 4) At a minimum, such a comment by Mr. McFadden would appear to present a conflict of interest.

It is apparent that ACCJC appointed a Hearing Panel which was not independent of the ACCJC, and had obvious actual and apparent conflicts of interest. All five hearing panel members were sufficiently involved with ACCJC that they could not have objectively and without actual or apparent bias, heard CCSF’s appeal. Given the failure of ACCJC, while under scrutiny, to appoint a panel free from conflicts, ACCJC has proven again that it is in violation of federal requirements concerning conflicts of interest, and is unworthy of continued recognition by the Secretary.

B. ACCJC’s Rejection of CCSF’s Motion to Remove Appeals Panel Members With Conflicts of Interest

As mentioned above, CCSF moved to disqualify McGinnis and Richey from serving as members of the hearing panel. The decision from the hearing panel explains that the motion was denied. However, the grounds for the motion, the briefs, the Commission’s response and the decision itself, including who issued it, are not included with the decision, and were declared “confidential” by the ACCJC.

The facts cited above establish a structural weakness in ACCJC’s operations. Its Commission and its administration are either incompetent and unable to establish effective controls against conflicts of interest, or they lack the will to do so. Either way, they have proven through the handling of this appeal by CCSF, that they are unworthy of recognition by the USDE. Their failures are apparent for the public to see, and lead to justifiable scorn for their actions.

C. ACCJC Appointment of Peter Crabtree, the Husband of ACCJC President Barbara Beno, to Serve on an Evaluation Team Reviewing City College of San Francisco in April 2012.

While this appointment of Peter Crabtree to the 2012 CCSF evaluation team was a subject of CFT’s April 30, 2013, Complaint to the USDE and ACCJC, newly discovered information indicates that the ACCJC’s violations of federal requirements are even more serious than originally believed, and that ACCJC lacks the capacity to identify and avoid actual or apparent conflicts of interest. The USDE previously found that because of Mr. Crabtree’s marriage to Dr. Beno, his appointment constituted an apparent conflict. Now, evidence proves that there was an actual conflict, because Mr. Crabtree’s Career and Technical Education program at Laney College in Oakland, stood to gain from placing CCSF on Show Cause or Disaccreditation.

ACCJC Vice President Jack Pond testified in a deposition on or about April 30, 2014, that it was a conflict of interest for the ACCJC to appoint visiting team members from a college

adjoining or abutting the college under review. (See Attachment 17, City Attorney Post Trial Brief p. 5). Pond explained that this constitutes a conflict of interest because the adjoining college could benefit from students transferring to the adjoining college based on findings of a site visit team. (Pond Depo Transcript as cited in City Attorney brief - 99:10-11; 102:6-10; 102:11-12).

Despite this, the ACCJC appointed Peter Crabtree to serve on the site visit evaluation team that evaluated CCSF in Spring 2012. Mr. Crabtree is a Dean of Career and Technical Education at adjoining Peralta Community College District. His program would stand to gain students if CCSF closed as a result of disaccreditation by the ACCJC.

ACCJC president Barbara Beno testified that prior to the CCSF evaluation team visit, she learned of her husband's appointment by her Vice President, Jack Pond. Dr. Beno is in overall charge of ACCJC's actions, and upon learning of her husband's appointment, was obliged to indicate he could not serve because of this conflict. She failed to do so. In fact, her reaction was to tell him to "have fun." (Statement made in open court on October 30, 2014).

The agency has a small staff, all of whom report directly or indirectly to Barbara Beno. Beno was aware of her husband's appointment, and was presumptively aware of the conflict of interest policy described by Mr. Pond. Nonetheless, Ms. Beno failed to take action to prevent the actual or apparent conflict of interest.

These events illustrate that ACCJC remains out of compliance and fails to grasp what it needs to do to come into compliance. Effective controls against conflicts involve having systems in place to identify and prevent conflicts of interest, which we discuss below.

1. Failure to Adopt Effective Standards and Procedures to Identify and Prevent Conflicts of Interest.

ACCJC has still not adopted effective standards, procedures and controls to avoid actual and apparent conflicts of interest, despite having been determined by the Department in August 2013, to have allowed an apparent conflict of interest in the appointment of Dr. Beno's husband to serve on an evaluation team evaluating City College of San Francisco.

ACCJC standards appear to primarily involve efforts to identify conflicts only where a proposed visiting team member has a "relationship" of some sort with the college under review and, since October 2013, or where any team member has a spousal relationship with ACCJC's administration or Commission. This latter revision was a direct result of the USDE's August 2013 findings on the CFT complaint. This revision was not enough.

The standards and procedures ACCJC adopted still fail to solicit specific information that might identify potential conflicts with the ACCJC. For instance, the Commission apparently makes no effort to solicit information either from institutions under review, or prospective team

members, disclosing any prior involvement of any kind between the college to be evaluated and the prospective reviewer.

The procedures also do not provide for involvement of the faculty, staff and the public who are directly involved with the institution under review, and may have information relevant to an actual or apparent conflict.

ACCJC's internal procedures do not create an effective control process under which apparent or actual conflicts are identified and prevented or immediately corrected. In addition, ACCJC lacks an effective and empowered compliance and ethics program designed to address the typical conflicts that arise during accreditation evaluations and decisions. Policies and procedures must include processes to identify, assess, mitigate and avoid conflicts of interest. An illustrative list of typical processes is included below.¹¹

Here there is no indication that the ACCJC staff is sufficiently independent and knowledgeable to exercise reasonable oversight with respect to the implementation and effectiveness of a conflicts program. Here, three members of the Commission (its Executive Committee) were ultimately responsible for appointing an unbiased appeals panel, yet they appointed a panel riven with actual or apparent conflicts of interest. Each of the three Commissioners was presumably aware of the entanglement of McGinnis with Dr. Beno and the ACCJC, as their joint activities were highly publicized. Yet they apparently looked the other way.

There is no evidence that ACCJC has leadership that respects an effective ethics and compliance program directed at controlling conflicts of interest. ACCJC was quick to pass judgment on the ability of CCSF's publicly-elected trustees to continue to govern City College of San Francisco, but it made no effort to exclude from individuals with actual or apparent conflicts, from the Appeals Panel. The Commission itself accepted the appointment of five persons with patently obvious actual or apparent conflicts. As such, the entire Commission and its administration appears to lack the capacity, competence and knowledge to satisfy the Department's recognition criteria. The following are some of the clearly identified components of an effective program to control conflicts of interest.

Education and Training. There is no evidence that ACCJC has undertaken any effective education and training to avoid actual or apparent conflicts of interest among team members, staff, commissioners, and its appeals panel.

¹¹The measures and elements of an effective conflict of interest program are taken from a presentation entitled "Conflicts of Interest and Risk Governance," by Carlo V. DiFlorio, Director, Office of Compliance Inspection and Examinations, U.S. Securities and Exchange Commission, Oct. 22, 2012, pp. 6-9. Available at: <http://www.sec.gov/News/Speech/Detail/Speech/1365171491600#.VIDWLSnexOk>

Auditing and Monitoring. There is no evidence ACCJC has adopted any effective auditing or monitoring programs to avoid actual or apparent conflicts.

Incentives and discipline. The president of the ACCJC and her team of executives is ultimately responsible for implementing most of ACCJC operations. Yet there is no evidence that the Commission has issued appropriate action, including if necessary discipline, for the ACCJC's failures to take reasonable steps to prevent or detect actual or apparent conflicts. The president's actual approval of the appointment of her husband, despite readily apparent actual and apparent conflicts, strongly indicates the Commission is incapable of controlling conflicts of interest. .

Prevention. The ACCJC has failed to take effective steps to prevent the recurrence of actual or apparent conflicts of interest, including adopting an effective compliance and ethics program.

VI. ACCJC's Appeals Process Violates the Department's Regulations

Violation # 12: 602.25(f)(1)(iii) - ACCJC failed to afford its hearing appeals panel sufficient authority to make independent decisions.

Violation # 13 and #14: 602.15(a)(1) and (2) - ACCJC's failure to delegate sufficient authority to its hearing panel demonstrates that ACCJC lacks adequate, competent and knowledgeable staff to carry out its accrediting responsibilities.

A. ACCJC Did Not Afford Its Appeals Panel Sufficient Authority

34 CFR Sec. 602.25(f)(1)(iii) states that the appeals hearing panel must be one that:

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, AMEND, or reverse adverse actions of the original decision-making body. . . . (Emphasis added.)

This section requires that an appeals panel, in order to amend a commission's decision, must have the ability to enter a ruling that replaces the Commission's ruling, which means, the appeals hearing panel must be able to do anything that the Commission could have done.

The ACCJC appointed an appeals panel of five persons, to hear the appeal of the City College of San Francisco. One of the primary issues was whether the Commission erred in failing to give CCSF a lesser sanction and more time to comply with ACCJC's standards.

Under Sec. 602.25, the hearing panel must have the power to amend the Commission's ruling by giving CCSF a lesser sanction and more time to comply, and the related power to impose whatever conditions the hearing panel felt were appropriate under the circumstances to implement its order. The Department's Guidelines for 34 CFR Part 602, contain no other details

about this requirement.

The ACCJC Bylaws violate the requirements of 602.25(f)(1)(iii). Article IX, Appeals, Section 8.1. (Page 14-15), states that the Hearing Panel may “amend” the Commission’s action, but then goes on to state that the Hearing Panel’s

decision may *recommend, but shall not dictate*, any terms or conditions to be imposed on the accreditation . . . of the institution by the Commission when it implements the Hearing Panel’s decision. The Commission shall thereafter implement the Hearing Panel’s decision and, in doing so, shall retain the discretion to impose conditions, including a sanction which is less than the . . . termination of . . . accreditation of the institution. . . .

The fact that the Commission has **retained for itself**, under the guise of “conditions,” the discretion to impose requirements means that the Appeal Panel does not have full authority to amend the Commission’s original action. That raises the question as to what amendments the Commission will accept from an appeals panel, since the Commission has also retained for itself the authority to “implement” the Panel’s decision. Putting it differently, the restriction in the Bylaws that allows the Hearing Panel to recommend but not, for example, order a lesser sanction leaves the hearing panel in an “advisory or procedural role” – a role that is not permitted under Sec. 602.25(f)(1)(iii).

There are additional problems with the agency’s By-Laws relating to appeals.

First, the allowable grounds for appeal include a claim that “(1) there were errors or omissions in carrying out prescribed procedures on the part of the evaluation team and/or the Commission which materially affected the Commission’s action.” It is uncertain what “prescribed procedures” are, but an appeal must be considered when asserted on the ground that the actions of the ACCJC evaluation team or Commission failed to comply with applicable substantive or procedural requirements of law. That ground does not appear to fall within number (1), quoted above, and it clearly does not fall within any of the other grounds allowed in the By-Laws.

Second, the agency’s By-Laws have been amended to impose **attorneys fees** on a litigant *college* that abandons or loses its lawsuit (this section is in italics in the By-Laws, at the very end of Article X). This proviso is inconsistent with federal policy, which affords colleges an absolute right to file appeals. By imposing legal fees, the agency adds a condition not imposed by the Secretary, and one which discourages pursuit of appeals by colleges believing they have been wronged. The agency’s bylaws do not provide that a college which succeeds in reversing an adverse decision is awarded attorneys fee by the agency.

Third, the agency appoints a hearing panel which does not independently review actions of the agency. This is because the agency’s appeal panel “defers” to the judgment of the agency.

In a section of its decision on an appeal by City College of San Francisco entitled “**Preliminary Considerations,**” the Hearing Panel adopts a very deferential approach to the “Commission’s decision” made in June 2013, and announced on July 3, 2013, disaccrediting City College. Presumably an ACCJC attorney provided the Hearing Panel with several quotations about how extensively *courts defer to accrediting agency* decisions. All of those quotations are irrelevant, since the Hearing Panel is itself *part of the ACCJC*. ACCJC’s appeals panel has no authority under which it gives “deference” to the decision of the ACCJC. Similarly, the quotations from case law about how courts respond to claims of disparate treatment are irrelevant to how the Hearing Panel should respond. Similarly, standards of review applied by a court for proof of an accreditor’s violations of policy or law are not applicable to the ACCJC’s internal administrative proceedings.

B. ACCJC’s Failure to Afford Its Appeals Panel Sufficient Authority Indicates that ACCJC Lacks Adequate, Competent and Knowledgeable Administrative Staff

Once again, ACCJC’s failure to satisfy an applicable federal regulation indicates that it lacks an administrative staff that is adequate, competent and knowledgeable so as to carry out its responsibilities as a recognized accreditor.

VII. ACCJC Has Restricted the Right of the Public and Others to File Complaints Against the Commission, in Violation of § 602.23(c)(3)

Violation # 15: 602.23(c)(3)- ACCJC has failed to adopt a complaint procedure that conforms to federal requirements.

602.23(c)(3)

Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

In its 2012 Guidance memo concerning 34 CFR Part 602, the Department explains,

1. “The agency has written policies and procedures for receiving and processing complaints (including anonymous complaints) against its accredited institutions/programs, and itself, . . .” (2012 Guidance, p. 66)

ACCJC violates this requirement because it does not accept **anonymous** complaints. Rather, ACCJC refuses to accept a complaint unless “The complainant must be clearly identified and . . . must contain an original signature.” (Attachment 19, pp. 1-2)

2. “The agency’s policies provide for the analysis and resolution of complaints related to the agency’s standards, policies and procedures, . . .”

ACCJC violate this requirement because “The ACCJC does not review complaints presented primarily to indicate disagreement with accreditation standards.” (Attachment 19, p. 1)

3. Federal regulation 602.23(c)(3) allows for the filing of “any complaint.”

ACCJC violates this requirement because ACCJC does not allow complaints “which a member institution” can raise via due process, or unless the complainant was “directly aggrieved by the acts or omissions.” (Attachment 19, p. 1)

ACCJC also violates this requirement by declaring that it generally will not consider complaints concerning matters occurring “more than three years prior to filing the complaint.” Since ACCJC maintains most of its activities in confidence, and now routinely destroys documents relating to accreditation activities, this attempt to create a statute of limitations violates federal law.

The ACCJC’s 2012-2013 complaint policy was three brief paragraphs, and provided that a complaint could be filed,

“regarding the agency’s Standards, criteria, procedures, or actions of staff or any other Commission representative. In order to be considered a formal complaint against the Commission, a complaint must involve issues broader than a concern about a specific institutional action or a specific evaluation team.”

The narrowing of this policy, and the timing of ACCJC’s revised policy strongly suggests it was adopted to limit the rights of the public affected by ACCJC’s actions, to pursue complaints against the ACCJC. The revised policy certainly has that effect, and for the reasons stated it fails to comply with 602.23(c)(3).

VIII. Conclusion

These 15 violations of Federal regulations support the Department ceasing to recognize the ACCJC as a reliable accreditor.

Complainants respectfully request that the Department consider this Complaint and take appropriate action. We also request that this Comment be considered in regard to the Departments future actions on continued federal recognition of the ACCJC.

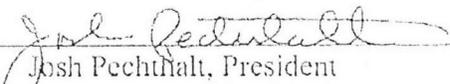
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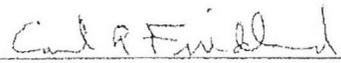
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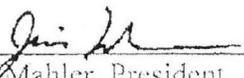
By: /s/ Robert J/ Bezemek
Robert J. Bezemek
Counsel for Complainants and
Commenters

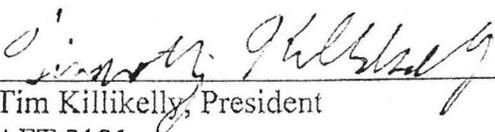
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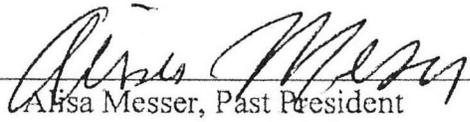
The undersigned have read the Complaint and Third Party Comment herein, and verify that it is filed for and on behalf of the specified organizations or individuals, including the California Federation of Teachers, AFT/AFL-CIO and AFT Local 2121.

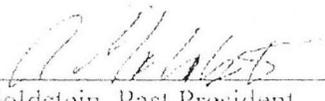
December 15, 2014 By 
Josh Pechthalt, President
California Federation of Teachers

December 15, 2014 By 
Carl Friedlander, Past President
Community College Council
California Federation of Teachers

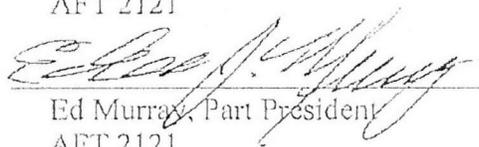
December 15, 2014 By 
Jim Mahler, President
Community College Council
California Federation of Teachers

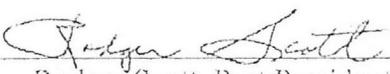
December 15, 2014 By 
Tim Killikelly, President
AFT 2121

December 15, 2014 By 
Alisa Messer, Past President

December 15, 2014 By 
Gus Goldstein, Past President
AFT 2121

December 15, 2014 By 
Allan Fisher, Past President
AFT 2121

December 15, 2014 By 
Ed Murray, Part President
AFT 2121

December 15, 2014 By 
Rodger Scott, Past President
AFT 2121

December 15, 2014

By

A handwritten signature in cursive script that reads "Chris Hanzo". The signature is written in black ink and is positioned above a horizontal line.

Chris Hanzo, Executive Director
AFT 2121

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