

**BEFORE THE  
U.S. DEPARTMENT OF EDUCATION**

**In the matter of:**

**The Recognition of the  
Accrediting Commission for  
Community and Junior Colleges,**

**/**

**Complaint of**

**American Federation of Teachers, AFL-CIO  
California Federation of Teachers; AFT; AFL-CIO  
AFT Local 2121, CFT, AFL-CIO  
California Community College Independents  
Randi Weingarten, President, AFT; AFL-CIO  
Joshua Pechthalt, President, CFT  
Tim Killikelly, President of AFT 2121**

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**TABLE OF EXHIBITS**  
**To the Complaint Submitted on August 5, 2016**  
**to the U.S. Department of Education**

No.	Description
1	“Policy on Complaints Against the [ACCJC]”, ACCJC Accreditation Reference Handbook, July 2015 Ed.
1.A.	Letter, August 24, 2010, from Kay W. Gilcher, Director, Accreditation Division to Barbara Beno
2	Letter, August 13, 2013, from Kay W. Gilcher to Barbara Beno
3	ACCJC May 30, 2013 Response to CFT April 30, 2013 Complaint
4	2013 Department of Education Staff Report
5	Letter, January 28, 2014, from Acting Assistant Secretary Brenda Dann-Messier to Barbara Beno
6	CFT April 30, 2013 Complaint, p. 262
7	Final Injunction and Judgment, February 17, 2015
8	California State Auditor Report, June 2014
9	75 Written Comments submitted to NACIQI
10	Decision of the Secretary, January 4, 2016
11	Letter, March 10, 2016, from Deputy Assistant Secretary for Policy, Planning, and Innovation, Lynn B. Mahaffie to Barbara Beno
12	Summary of Bureau of State Audits Report, No. 2013-123
13	Report of the 2015 California Community Colleges’ Chancellor’s Office 2015 Task Force on Accreditation
14	Digest regarding the 2016 Accreditation Implementation Task Force, February 18, 2016
15	Presentation by Brice W. Harris to Board of Governors of the California Community Colleges, Board Meeting, March 21-22, 2016
16	Resolution of the Board of Governors, No. 2016-03
17	San Francisco <i>Chronicle</i> and Los Angeles <i>Times</i> articles regarding ACCJC
18	NACIQI Meeting, December 17, 2015, Transcript p. 46
19	ACCJC Announcement regarding Restoration Status, June 11, 2014
20	ACCJC Team Evaluator Manual, 2012 Edition, p. 4
21	CFT April 30, 2013 Complaint, p. 196
22	Department of Education 2012 Accreditation Guidelines
23	ACCJC Team Evaluation Manual, 2015 Edition, p. 4
24	CFT April 30, 2013 Complaint, Attachment 8
25	<i>People of the State of California v. Accrediting Commission for Community and Junior Colleges</i> , October 2014 Trial Transcript, pp. 834-835
26	ACCJC Answers to Recent Questions
27	San Francisco Superior Court Judge Karnow, Statement of Decision, February 17, 2015
28	<i>People of the State of California v. Accrediting Commission for Community and Junior Colleges</i> , October 2014 Trial Transcript, p. 433
29	ACCJC Post Trial Brief in <i>People of the State of California v. Accrediting Commission for Community and Junior Colleges</i> , December 2, 2014
30	City Attorney’s Post Trial Brief in <i>People of the State of California v. Accrediting</i>

	<i>Commission for Community and Junior Colleges</i> , December 2, 2014
31	Letter, April 14, 2014, from CCSF Chancellor Tyler to Community
32	Letter, May 9, 2014, from Nancy Pelosi to Lynn B. Mahaffie
33	San Francisco <i>Chronicle</i> , May 13, 2014, “City College of S.F. could get more time to shape up,” by Nannette Asimov
34	San Francisco <i>Chronicle</i> , May 14, 2014, “CCSF supporters press for extension to fix problems,” by Nannette Asimov
35	San Francisco <i>Chronicle</i> , May 15, 2014, by Nannette Asimov, quoting Barbara Beno saying, “It’s gibberish...”
36	Letter, May 19, 2014, from Lynn B. Mahaffie to Nancy Pelosi
37	Letter, May 27, 2014 from Barbara Beno, Sherrill Amador and Steven Kinsella to Nancy Pelosi
38	ACCJC Memorandum of Points and Authorities in Support of Motion to Stay, July 1, 2014
39	People’s Opposition to Defendant ACCJC’s Motion to Stay Proceedings, July 8, 2014
40	“Policy on Commission Actions on Institutions,” ACCJC Accreditation Reference Handbook, July 2015 Edition, pp. 45-46
41	“Policy on Commission Good Practice in Relations with Member Institutions,” ACCJC Accreditation Reference Handbook, 2013 Edition, p. 44
42	Letter, June 20, 2014, from Deputy Undersecretary Jamiene S. Studley to Barbara Beno
43	Email, July 10, 2014, from ACCJC Vice President Krista Johns to Diana Scott
44	Letter, February 27, 2015 from ACCJC Vice President Krista Johns to Robert Bezemek
45	CFT December 15, 2014 Complaint to ACCJC and Department of Education, Attachment 6
46	Northwest Commission on Colleges and Universities, “Commission Action Regarding Institutional Compliance Within Specified Period Policy”
47	Southern Association of Colleges and Schools Policy Statement, “Sanctions, Denial of Reaffirmation, and Removal from Membership”
48	Western Association of Schools and Colleges (WASC), Accrediting Commission for Senior Colleges and Universities, Commission Meeting Guide
49	Memorandum Order Granting in Part and Denying in Part City Attorney’s Motion for a Preliminary Injunction, pp. 13-14, January 2, 2014
50	Letter, July 2, 2012, from Barbara Beno to Pamila Fisher
51	Letter, July 3, 2013, from Barbara Beno to Thelma Scott-Skillman
52	ACCJC “Withdrawal of the Accreditation of City College of San Francisco,” May 27, 2014
53	ACCJC Statement on Judge Karnow’s Tentative Decision
54	ACCJC, “The Way Forward for City College,” April 13, 2014
55	“Policy on Commission Good Practice in Relations with Member Institutions,” ACCJC Accreditation Reference Handbook, 2012 Edition
56	CFT December 15, 2014 Complaint to ACCJC and Department of Education
57	ACCJC Question/Answer Memo
58	Hank Reichman, May 8, 2014, the <i>Academe Magazine</i> Blog, “The Latest on the CCSF Accreditation Controversy”
59	San Francisco <i>Chronicle</i> , April 21, 2014, updated April 22, 2014 – “Errors seen in commissioners’ opinion piece on CCSF funding.”
60	Letter, April 25, 2014, from Helen Benjamin to ACCJC



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August 8, 2016

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

John King, Jr., Secretary of Education  
U.S. Department of Education  
1990 K St. NW  
Washington DC 2006

**Re: Complaint Alleging Violations of Federal Requirements for Recognition by the Accrediting Commission for Community and Junior Colleges/WASC.**

Dear Secretary King:

This complaint is submitted to the U.S. Department of Education (“ED” or “Department”) pursuant to 34 C.F.R. §§ 602.32(b)(3) and 602.33(a)(2). Section 602.32(b)(3) authorizes the Department’s “Review of complaints or legal actions involving the agency”, while 602.33(a)(2) allows the ED to review an agency’s compliance with the federal criteria for recognition “Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.”

We are writing to ask that you make an immediate determination and denying the Accrediting Commission for Community and Junior Colleges’ (“ACCJC”) petition for continued recognition as a regional accreditor.

In 2013, the Department’s initial review of ACCJC’s application for renewal concluded that ACCJC failed to demonstrate compliance with fifteen of the Secretary’s Criteria for Recognition. The Commission is secretive, opaque and unaccountable. It denies due process to colleges; ignores the public interest; applies standards inconsistently and capriciously; and has lost sight of its obligation to evaluate colleges based on the quality of education they provide. The ACCJC’s violations are egregious. The ACCJC continues to flaunt federal rules and its authority should be rescinded immediately.

Over the last few years, the ACCJC has lost the confidence of the California Community College Board of Governors, State Chancellor, District Chief Executive Officers, Academic Senate, Faculty Unions and other statewide stakeholders. ACCJC has been audited and criticized by California’s Bureau of State Audits for inconsistent application of its accreditation process

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and lack of transparency regarding its critical decision-making. The ACCJC has been sued multiple times, and the San Francisco Superior Court found that it engaged in “significant unlawful practices,” in violating four federal regulations and California common law fair procedure. Overall, California and its students have been poorly served by the ACCJC.

The Department may “review the compliance of a recognized agency” “at any time,” as provided in 34 C.F.R. § 602.33(a)(2), and we hereby formally submit this complaint further documenting our concerns and providing credible information that raises issues relevant to the continued recognition of the ACCJC.

This complaint also provides information regarding legal actions against the ACCJC, including the case of the *People of the State of California v. Accrediting Commission for Community and Junior Colleges*, filed and decided in the Superior Court of the State of California, County of San Francisco, Case No. 13-533693; and, the case of *AFT Local 2121 et al. v. Accrediting Commission for Community and Junior Colleges*, filed in the same court. (Case No. 13-534447.)

The continued failure of the ACCJC to satisfy the Secretary’s criteria for recognition and the requirements of the Higher Education Act (20 U.S.C. § 1099b *et seq.*, herein “HEA”) calls for:

- The immediate action by the Department to remove ACCJC from reviewing City College of San Francisco (“CCSF”), which will otherwise be subject to an evaluation in October and an up-or-down review by ACCJC in January 2017 from which no appeal may be taken;
- Immediate denial of re-recognition to ACCJC; and,
- Direct assistance by the Department in the transition of the California community colleges to alternative recognized accreditors, for the upcoming accreditation reviews of these California community colleges.

Most of the evidence submitted in support of this complaint arose since the December 2013 meeting of the National Advisory Committee on Institutional Quality and Integrity (“NACIQI”).

## **I. Introduction**

### **This complaint is submitted by:**

American Federation of Teachers, AFL-CIO  
California Federation of Teachers; AFT; AFL-CIO  
AFT Local 2121, CFT, AFL-CIO  
California Community College Independents Organization  
Randi Weingarten, President, AFT; AFL-CIO  
Joshua Pechthalt, President, CFT

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Tim Killikelly, President of AFT 2121

The Complaint is filed with the Department of Education against the ACCJC, and a copy is submitted herewith to the ACCJC.

**Jurisdiction over this Complaint.** Federal law allows the public to file with the Department complaints against a recognized accreditor. (See § 602.32(b)(3)).<sup>1</sup> Should any further information or actions be necessary for this Complaint to be considered, please notify the Complainant.

This complaint refers to numerous documents as supporting evidence. The evidence is being submitted in a separate appendix. A separate version of this complaint is being submitted which refers to the evidence by attachment number.

## II. This Complaint

### A. The Complainants

The complainant American Federation of Teachers (“AFT”) is a national labor union of teachers and school support staff, higher education faculty, public employees, and health care professionals. The AFT is composed of more than 3,500 local unions, representing more than 1.6 million employees throughout the United States. Complainant Randi Rhonda Weingarten is the President of the American Federation of Teachers.

The complainant California Federation of Teachers (“CFT”) is the California affiliate of the American Federation of Teachers. The CFT is composed of 136 local unions chartered by the American Federation of Teachers, representing more than 130,000 educational employees throughout California. Complainant Joshua Pechthalt is the President of the California Federation of Teachers.

The complainant AFT Local 2121 represents the 1,500 academic employees – counselors, librarians and instructors – employed by City College of San Francisco. Complainant Tim Killikelly is the president of AFT Local 2121.

The complainant California Community College Independents Organization (“CCCI”) is a federation whose membership consists of 12 faculty unions that together represent more than 15,000 faculty in 12 California community college districts.

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<sup>1</sup> Federal law also 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. (See “Policy on Complaints Against the [ACCJC]”, ACCJC Accreditation Reference Handbook, July 2015 Ed., p. 52; **Exhibit 1**)

## **B. Background**

The ACCJC is currently and has been for many years the only recognized regional higher education accreditor with jurisdiction over the California community colleges, as well as other two-year higher educational institutions in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.

Since 2010, ACCJC has compiled a dismal record in regard to satisfying the Secretary's criteria for recognition as a regional accreditor. In the process the ACCJC has caused and threatens to cause further harm to California community colleges and the students attending California community colleges. **ACCJC's institutional failures are such that they cannot be corrected.**

A partial summary of the Department's prior determinations regarding ACCJC, and ACCJC's responses follows.

### **1. The Department's 2010 Decision Citing ACCJC Compliance Issues**

In 2010, the Accreditation Task Force of the Consultation Council of the California Community College Chancellor's Office filed a complaint with the Department alleging that ACCJC did not follow its processes and procedures in the selection of commissioners. In addition, the Academic Senate for the California Community Colleges (ASCCC) submitted a similar complaint.

On August 24, 2010, the Department wrote ACCJC indicating that ACCJC was in noncompliance with five federal requirements, citing 34 C.F.R. §§ 602.3, 602.14(b)(1), 602.14(b)(3), 602.15(a)(5), and 602.15(a)(6). **The violations identified by the Department dealt with ACCJC procedures for electing commissioners and were a harbinger of additional violations that have since been identified:**

- First, the method of electing commissioners violated 34 C.F.R. § 602.14(b)(1). The ACCJC did not "ensure that the members of the [commission] are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization, as required by 602.14(b)(1)."
- Second, the selection process involved informal contact by the ACCJC president with the president or chair of interest associations or trade organizations. The **process did not avoid conflicts of interest, lacked public notice, did not provide transparency** to the selection process, and did not demonstrate that the Commission had clear and effective controls against actual or apparent conflicts of interest. (See Letter, August 24, 2010, from Kay W. Gilcher, Director, Accreditation Division to Barbara Beno; **Exhibit 1.A.**)

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The Department's letter to ACCJC addressed the noncompliance:

“The Accreditation Division requests that you take immediate steps to correct the areas of noncompliance identified in this letter. Please provide a report to the Accreditation Division by November 1, 2010, to include your plan of corrective action to ensure that the Commission's processes and procedures by which Commissioners are selected comply with the Secretary's Criteria for Recognition, and to include timelines for completion of such actions. A follow-on report of your agency's corrective actions will be requested.” (**Exhibit 1.A., p. 4**)

ACCJC thereupon made changes in its commissioner selection process. However, the Department did not require ACCJC to replace the illegally elected commissioners.

Several commissioners appointed in violation of the Department's requirements<sup>2</sup> subsequently committed serious violations of federal regulations, as reflected in a decision by San Francisco Superior Court judge Curtis E.A. Karnow, following a trial held in October 2014. These illegal actions, discussed below, involved basic due process requirements of federal law, and the Commission's failure to follow explicit due process requirements set forth in ACCJC's own policies and procedures, and California law.

## **2. CFT's April 30, 2013 Complaint and Third Party Comment to the Department**

Following ACCJC's issuance of Show Cause order to City College of San Francisco on July 2, 2012, the CFT, AFT 2121 and many others filed detailed complaints with the Department and ACCJC. The CFT/AFT 2121 complaint was filed on April 30, 2013. This complaint resulted from CFT's comprehensive documentation of ACCJC's serious and long-standing violations of the ED's requirements.

Because ACCJC's renewal of accreditation would soon be under review by the Department, the CFT also filed its complaint as a Third Party Comment.

Federal law requires an accreditor to take seriously any complaints filed against it. ACCJC disregarded this requirement and responded to the April 30<sup>th</sup> Complaint with a perfunctory 7-page long “Report” dated May 30, 2013, ostensibly from ACCJC Chair Sherrill Amador. The Report indicated that because ACCJC President Beno had been the subject of allegations, “the Chair of the Commission appointed the members of the [Commission's] Executive Committee ... to” respond to the Complaint. This ACCJC report was incomplete and lacked sufficient detail to indicate that the ACCJC conducted a fair, equitable and unbiased investigation. Not a scintilla of documentary evidence was attached or referenced to support the ACCJC's assertion that it

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<sup>2</sup> The commissioners who served ACCJC in June 2013, when it discredited City College of San Francisco and who were selected under the illegal system include 17 of the 18 commissioners serving in July 2013.

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actually reviewed and investigated the allegations. Thus, ACCJC did not respond to the Complaint as required by 34 CFR § 602.23(c).

As a result, CFT filed a follow-up complaint on June 4, 2013, complaining about ACCJC's insufficient response to the CFT April 30, 2013 Complaint.<sup>3</sup> The Department agreed with the CFT that the ACCJC response was inadequate. On June 10, the Department wrote ACCJC and requested a "full and documented response ... by July 8, 2013."

On August 13, 2013, **the Department issued a letter finding that ACCJC was in violation of 4 federal regulations.** (34 C.F.R. §§ 602.15(a)(3), 602.15 (a)(6), 602.18(c), and 602.20(a)) and affording the agency 12 months to come into compliance:

"... we have determined that in order to avoid initiation of an action to limit, suspend or terminate ACCJC's recognition, ACCJC must take immediate steps to correct the areas of noncompliance ..." (Letter, Gilcher to Beno, Aug. 13, 2013, p. 5; **Exhibit 2**)

Despite this notification, ACCJC has persistently mischaracterized this notice – including at the 2015 NACIQI meeting – as being a "preliminary" conclusion, and it has done so publicly, another way in which ACCJC undermines its credibility and prevents its widespread acceptance.

In December 2013, the staff of the Department's Office of Postsecondary Education (OPE) issued a Staff Report to the Senior Department Official on ACCJC's "Recognition Compliance Issues." The Report delineated in considerable detail these issues in which it directed ACCJC to come into compliance. **It indicated that ACCJC was out of compliance with 15 regulations, including 34 C.F.R. § 602.13.** These were serious violations, including the agency's failure to demonstrate wide acceptance by educators – a defect ACCJC has not been able to cure, despite receiving three additional years to come into compliance.

The 2013 Staff Report also noted that besides the CFT, more than 100 individuals and organizations filed third party comments in connection with ACCJC's petition for continued recognition. (2013 Staff Report, p. 6; **Exhibit 4**) The Staff recommended that the Department require ACCJC to come into compliance within 12 months, except for items noted in the August 13 letter, which required compliance by August 2014.

The matter of ACCJC's request for continued recognition then went before the National

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<sup>3</sup> CFT also complained that although ACCJC's May 30 response (**Exhibit 3**) declared that its president, Barbara Beno, had essentially been "recused" from responding to the complaint because of allegations against her, the copy of ACCJC's Report posted on ACCJC's website had a file name, "**Complaint analysis drafted by BB ...**". CFT raised the issue of whether Beno had really been recused, and whether the Commission was being forthright in asserting this to be the case. ACCJC's second response to CFT's complaint did not address this issue, further raising questions about ACCJC's integrity.

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Advisory Committee on Institutional Quality and Integrity (“NACIQI”) in December 2013, and on January 28, 2014, the Acting Assistant Secretary Brenda Dann-Messier issued her decision on the ACCJC’s request for the renewal of its recognition. (Letter, Acting Assistant Secretary to Dr. Barbara Beno; **Exhibit 5**). The decision provided that the Department would continue ACCJC’s recognition until January 2015, to demonstrate compliance with the 15 federal regulations for which it was out of compliance.

ACCJC subsequently appealed the ED’s decision as to two recognition criteria, § 602.13 (whether ACCJC was “widely accepted” by educators and educational institutions), and § 602.15(a)(3) (whether ACCJC had the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition, in particular with regard to academics on its evaluation teams.).

### **3. The Legal Actions Against the ACCJC**

Following the 2010 complaints by the Task Force and the statewide Academic Senate in 2010, dissatisfaction with ACCJC grew among community college educators and other stakeholder groups. This discontent centered on ACCJC’s excessive focus on planning processes, its reduced attention to academic quality, and the fact that it had become increasingly and unfairly punitive in its accreditation decisions.

As the CFT revealed in its April 2013 complaint to the ED, the ACCJC had over a dozen years become the most aggressive – some would say “reckless” – regional accreditor in the country, consistently sanctioning its member institutions at a *rate in excess of 400% the rate of the next highest-sanctioning accrediting body*. Over the last five years, that rate has, at times, *exceeded 700%*. In 2012 no other regional accreditor sanctioned above 4% of the total number of their member institutions. For ACCJC, however, 19% of their member institutions were on sanction in 2012. (See CFT April 30 Complaint at p. 262; **Exhibit 6**)

Matters came to a head when ACCJC placed City College of San Francisco on Show Cause sanction in July 2012, and then discredited it in July 2013, actions which endangered the education of 80,000 students, the employment of 2,500 employees, the continuation of more than 40 academic programs and 40 of the finest vocational programs in the nation, and threatening the loss of over \$300 million dollars to the San Francisco economy. Both the San Francisco City Attorney and CFT filed suit and the Superior Court enjoined the discreditation decision in January 2015.

In a trial held on the City’s case in October 2014, the Court held that ACCJC had violated four federal regulations:

- **602.15(a)(6)** [the ACCJC illegal commissioner selection process],
- **602.15** [insufficient academics on the 2013 show cause evaluation team],

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- **602.18(e)** [failure to provide a detailed written report clearly identifying deficiencies],
- **602.25(d)** [failure to give CCSF notice of 11 “new” deficiencies” identified by the Commission but not the team, and used as a basis for disaccreditation; and, failure to give CCSF a chance to respond to the new deficiencies].

On February 17, 2015, Judge Karnow issued a Final Injunction and Judgment for ACCJC to “reconsider” its decision to disaccredit City College of San Francisco. The Final Injunction and Judgment ordered, *inter alia*, the following:

1. Allow City College to opt into a process created by the Court that addressed ACCJC’s unlawful activity (the “Injunction Process”).
2. If City College opted in, provide within 40 calendar days a “written report that clearly identifies any deficiencies in City College’s compliance with accreditation standards as of June 2013, and for each deficiency “set forth the evidence as of June 2013 which supported the finding of deficiency.” The Written Report was ordered to be “publicly available.”
3. Allow City College to provide a written response to the Written Report within 80 calendar days, that is publicly available.
4. On receipt of City College’s written response, ACCJC must promptly convene a meeting of the Commission to review the College’s response and the record as it existed as of June 2013, and provide the College an opportunity to appear before the Commission at this meeting. Then the Commission was ordered “within its lawful discretion whether to modify the decision to terminate CCSF’s accreditation or affirm it,” and then notify CCSF and the public.
5. ACCJC “must not remove CCSF from its present restoration status nor subject CCSF to adverse consequences because CCSF chooses to follow the reconsideration procedure to which it is entitled in this injunction.” (See Final Injunction and Judgment, filed February 17, 2015; **Exhibit 7**).

CCSF opted in to the Injunction Process, and after ACCJC prepared the required Report and City College availed itself of its rights, ACCJC reaffirmed its previous decision, and left City College in Restoration Status.

This August 2016 complaint asks the ED to review the legal action brought by the People of the State of California against the ACCJC, as well as various matters arising in the still pending legal action filed against ACCJC by the CFT, *et al*.

#### **4. The Joint Legislative Audit Committee Hearing and Report**

On August 1, 2013, California State Senators Jim Nielsen and Jim Beall wrote a letter to the Joint Legislative Audit Committee (“JLAC”) requesting an audit of ACCJC’s unilateral and

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unmonitored actions. JLAC, appointed by the California Legislature, conducted a hearing into ACCJC's practices and actions on August 21, 2013, during which time it also approved the audit request.

Subsequent to the hearing, JLAC directed the California State Auditor to review ACCJC's practices and actions with respect to California's community colleges from 2009-2013. The State Auditor issued a report in June 2014 which concluded, *inter alia*, that ACCJC was "inconsistent in applying its accreditation process to City College of San Francisco (CCSF)." (State Auditor Report, June 2014, p. 21; **Exhibit 8**)

ACCJC President Barbara Beno wrote a letter to the State Auditor responding to the report's findings on June 9, 2014. Her letter, discussed below, contained unsupported arguments questioning the auditor's authority and competence.

## **5. Complaints of Others**

As the ED is no doubt aware, from 2013 to the present, numerous individuals have filed complaints against ACCJC asserting violations of numerous federal regulations. While we will not attempt to summarize those complaints here, they too indicate that ACCJC is not widely accepted by educators and other stakeholders.

In December 2015, the NACIQI held its biannual meeting and considered whether ACCJC should be re-recognized by the Secretary. Dozens of educators, other individuals and organizations spoke against the continued recognition of ACCJC. Because ACCJC had appealed earlier findings related to its "acceptance" (34 C.F.R. § 602.13) and whether it has displayed the financial and administrative capability to be a recognized accreditor (34 C.F.R. § 602.15), statements and comments pertaining to those two issues were barred. However, more than 75 such comments had been filed. Inasmuch as they were not previously considered, and these issues are now ripe for consideration, Complainants submit those comments herewith. (**Exhibit 9**).

## **6. The Department's Continued Review of ACCJC**

On December 15, 2015, the Department issued a Staff Report in regard to ACCJC's request for continued recognition, citing seven federal regulation violations, three of which were given a good cause extension of twelve months to come into compliance. NACIQI met on December 16-18, 2015, and recommended instead that ACCJC receive a good cause extension to come into compliance within six months.

On January 4, 2016, the Department released the Decision of the Secretary on the two items ACCJC had previously appealed. The Commission was granted continued recognition "pending submission of a compliance report on sections 602.13 and 602.15(a)(3) within 12 months from the date of this decision." (January 4, 2016, Decision of the Secretary, p. 13; **Exhibit 10**) The compliance report is due in January 2017.

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On March 10, 2016, the Secretary acted on the NACIQI recommendation and that of the senior department official, and issued a letter to ACCJC requiring that it comply with seven federal regulations by October 2016. (Letter, Deputy Assistant Secretary for Policy, Planning, and Innovation, Lynn B. Mahaffie to Barbara Beno, dated March 10, 2016; **Exhibit 11.**)<sup>4</sup>

As a result of the foregoing events, ACCJC remains under continued review for renewed recognition, with a report due October 10, 2016. In addition, ACCJC must respond to the two important issues delayed by its appeal of the Department's 2013 findings by January 2017.

### **C. Summary of This Complaint**

This Complaint identifies several ways in which the ACCJC continues to be out of compliance with federal requirements for recognition. Because the ED has not yet had the opportunity to consider the full range of information regarding ACCJC, this complaint focuses primarily on new information and developments since the ED's 2013 Staff Report on the ACCJC.

**1. ACCJC is not widely accepted.** Overwhelming evidence proves that ACCJC is not widely accepted as required by 34 C.F.R. § 602.13. This complaint presents a body of evidence that was not available prior to August 2013, when the Department concluded that ACCJC had not produced sufficient evidence that it was "widely accepted." Since then, ACCJC is even less widely accepted, and hence continues to not comply with this requirement.

As discussed in greater detail below, ACCJC's lack of acceptance by educators is demonstrated in many ways:

- **The California Bureau of State Audits**<sup>5</sup> hearing and then its report issued in June 2014, concluded, *inter alia*, that ACCJC was inconsistent in applying its accreditation process, lacks transparency, and sanctions California community colleges at a significantly higher rate than the other recognized regional accreditors. (See Summary of Bureau of State Audits Report, No. 2013-123; **Exhibit 12.**)
- **The Chief Executive Officers ("CEOs") of the 113 California community colleges** have held meetings and discussions out of concern that ACCJC is not acceptable. As a result, the CEOs created a task force to prepare for discussion at a March 2016 Symposium. Seventy-three CEOs provided written feedback to the task force and the CEOs ultimately agreed to pursue "alternative structures for a regional accreditation that

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<sup>4</sup> The Staff Report had recommended one year, but NACIQI, its members publicly expressing significant frustration with the ACCJC, shortened the compliance timeline.

<sup>5</sup> The Bureau of State Audits is a nonpartisan agency created by Cal. Government Code § 8543 *et seq.*

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aligns all segments of higher education, and to make improvements in the current process of ACCJC while moving towards a new accreditor.”

**The Board of Governors and Chancellor of the California Community Colleges, the CEO’s of the 113 California community colleges, and other interested parties.** The Board of Governors and Chancellor of the California Community Colleges, and other interested parties have become increasingly frustrated with ACCJC’s actions.

In 2015 the Chancellor’s Office created a Task Force on Accreditation. The Task Force was created because,

“for at least the past eight years, the accreditation process has been a subject of concern throughout the California Community Colleges. Consistent calls for reform of the accreditation process and change on the part of the accrediting commission have been raised by the Chancellor’s Office, administrative organizations, faculty groups, classified staff and voices outside the college system.” (Report of the 2015 California Community Colleges’ Chancellor’s Office 2015 Task Force on Accreditation; **Exhibit 13.**)

In November 2015, “Members of the task force reached consensus that the current accreditor for the California Community Colleges had lost credibility with the system.” (See, Digest regarding the 2016 Accreditation Implementation Task Force, February 18, 2016; **Exhibit 14.**)

The Report the Task Force issued included a thorough assessment of accreditation under the ACCJC. It noted also that the Academic Senate for California Community Colleges adopted numerous resolutions expressing concerns about the accreditation process. (*Id.*, p. 3) The Report emphasized that,

“Yet despite ... many calls for reform from the community college system as a whole and from individual constituent groups, the ACCJC has shown little evidence of its willingness or ability to address and resolve concerns that have been raised. In spite of the many overtures on the part of the member colleges and their representatives, to work with the accrediting commission in resolving issues and improving processes, the ACCJC has made no significant effort to engage in meaningful or lasting reform.” (*Id.*, p. 4)

The State Chancellor reconvened the 2015 Task Force with augmented membership “as the 2016 Accreditation Implement Task Force.” In doing so it was noted by the Chancellor’s Office that the “ongoing status and viability of the system’s current accreditor [the ACCJC]” had come under question with the December 2015 NACIQI review of ACCJC. (**Exhibit 14, pp. 2-3**)

The Accreditation Implementation Task Force called into question ACCJC’s continued viability:

“... the Accreditation Implementation Task Force finds that a continued relationship between the California Community College System and ACCJC in its current form is not in the best

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interest of the system's colleges and students. The California Community College System requires a responsive, credible structure for accreditation that more effectively meets current and future needs, provides stability to the system's colleges in terms of accreditation status, reflects the collegial culture and values of its members, and ultimately joins the accreditation structure of the community colleges with that of the other segments of higher education.”  
**(Exhibit 14, p.2)**

Their report outlined a “transition” to a new accreditor. *Id.* It recommended to the State Chancellor, *inter alia*, that “the Chancellor’s Office should enter into an agreement with a regional accreditor that better aligns the accrediting structure for the California Community Colleges with that of other segments of higher education ... The agreement should allow for the full transition of California’s 113 community colleges to this new regional accreditor in no more than six years. (*Id.*, p. 3)

As former State Chancellor Brice Harris has related, the events noted here were the culmination of repeated but unsuccessful efforts to bring ACCJC into compliance with federal law and the needs of the State’s community colleges. As he explained in March of 2016, “Since 2009 the California community colleges Chancellor’s Office has commissioned a series of task forces to examine the status of accreditation and make recommendations regarding the current and future accreditation needs of the system. Formation of these task forces stemmed from changes in the needs of the colleges as well as growing concern and frustration expressed by multiple constituent groups. These groups, including faculty, staff, CEOs, trustees, students, and other statewide organizations, expressed concerns regarding the accreditor’s lack of transparency, collegiality, and consistency in the accrediting process, as well as, the sanctioning of two-thirds of the state’s community colleges over the last decade.” (Presentation by Brice W. Harris to Board of Governors of the California Community Colleges, Board Meeting, March 21-22, 2016; **Exhibit 15.**)

Chancellor Harris’ presentation recommended that the Board of Governors take action to “establish a new model of accreditation”, and that it create an action plan with a timeline.

The Board adopted a resolution at its March 2016 meeting that the State Chancellor,

“Present to the Board of Governors **final recommendations on a new structure or agency for accreditation** of the California Community Colleges based on the work of the planning groups coordinated by the CEO’s, review the formal plan for college transition and bring to the Board of Governors the necessary information for the Board to **recommend a new accreditor** for the California Community Colleges to be submitted to the U.S. Department of Education for approval.” (Resolution of the Board of Governors, No. 2016-03; **Exhibit 16.**)

As is apparent, ample evidence confirms that ACCJC is not widely accepted by educators and institutions in California.

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- **The California Community Colleges Task Force on Accreditation’s Report** from 2015 also states, “... despite many calls for reform from the community college system as a whole and from individual constituent groups, the ACCJC has shown little evidence of its willingness or ability to address and resolve concerns that have been raised. In spite of the many overtures on the part of the member community colleges ... to work with the accrediting commission in resolving issues and improving processes, the ACCJC has made no significant effort to engage in meaningful or lasting reform.” **(Exhibit 13, p. 4)**
- **The Board of Governors of the California Community Colleges** supported an initiative to fundamentally change accreditation, modified California regulations to de-list ACCJC from Cal. Code Regs., tit. 5, § 51016, and to initiate a process to seek an alternative accreditor. In its recommendation and resolution (No. 2016-03) the BOG states, “The 2015 Task Force on Accreditation, conducted a comprehensive review... (of) the ACCJC. The task force members reached clear consensus that the ACCJC had lost credibility within the system. The task force report identified ideal attributes that the system should expect of its accreditor in the changing landscape of public higher education and concluded that the current accreditor does not meet those expectations.” **(Exhibit 15).**
- **California news media**, including the San Francisco *Chronicle* and the Los Angeles *Times* have raised questions about ACCJC’s actions, and supported the Board of Governors in removing ACCJC from a state regulation that had previously designated it as the community colleges’ accreditor. **(Exhibit 17)**
- **Over 75 individuals and organizations representing a broad spectrum of the education community submitted Third Party Comments to NACIQI** for its December 2015 meeting, and many testified to NACIQI. Their comments demonstrate why ACCJC has lost all credibility and is not widely accepted by educators. A copy is attached as **Exhibit 9.**

A few examples should suffice:

- Henry Reichman, a history professor at CSU East Bay, the national Vice President of the American Association of University Professors (AAUP), and chair of the AAUP’s Committee on Academic Freedom and Tenure, commented that many of AAUP’s members do not believe that ACCJC’s “standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted.” [34 CFR §602.13] He explained that this loss of confidence in ACCJC has now spread among faculty members at four-year institutions as well, adding “We have looked on with growing incredulity as ACCJC has sanctioned a series of community colleges that we know from experience to have sent to us extremely well-prepared and educated transfer students.” He added that: “ACCJC treats academic freedom as irrelevant.”
- Ron Galatolo, an administrator who is Chancellor of the San Mateo County Community

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College District and previously served as chair of the Chief Executive Officers of the California Community Colleges (CEOCCC) organization said that accreditation, as interpreted by the ACCJC, has little to do with the quality of instruction received by students, and that many of his administrator colleagues agree, but remain quiet because they fear retaliation from ACCJC.

- Paul L. Tidwell, a professor at the College of the Sequoias wrote that as a faculty member with 15 years of experience he was in a unique position to observe the accreditation process conducted by the ACCJC between October 2012 and November 2013. He wrote that based on his personal observations and the experience of other members of the local CTA union executive board, “we strongly feel that the ACCJC is non-compliant with several regulations: 34 C.F.R. §§ 602.13, 602.15(a)(3), 602.16(a)(1)(iii), 602.18(e), 602.19(b), and 602.21(c).”

Professor Tidwell noted that previous visiting teams in 2006 had found deficiencies in the college, but had issued a mid-term report in 2009-2010 finding that the college had addressed all deficiencies and that accreditation was extended with no negative findings or warning. In order to find the college in “substantial non-compliance,” in 2012, the ACCJC had to reach back 7 years prior to find evidence to support their finding of “Show Cause” for the College – evidence of violations that the ACCJC itself had found corrected by 2010.

- Lillian Marrujo-Duck, professor of History, and president of the CCSF Academic Senate wrote that as demonstrated by a letter signed by the vast majority of California community college chief executives, the ACCJC’s standards, policies, procedures, and decisions regarding the granting of accreditation are not widely accepted. She reported, for example, that a focus on compliance instead of student success led the ACCJC to take steps that the Superior Court in San Francisco ruled resulted in a denial of due process to City College of San Francisco.

She also noted that the ACCJC is not in compliance with 34 C.F.R. § 602.18(e) because it does not provide written specifications of deficiencies in relation to standards. Audience requests for clarification at the ACCJC’s accreditation training sessions have been answered with the ACCJC representatives responding that colleges have to work to figure it out for themselves. She states that the ACCJC has not provided detailed written reports, even after being required to do so by court order, referring to the ACCJC’s implementation of Judge Karnow’s order to give notice to CCSF of the “new” deficiencies found by the Commission, as to CCSF, in 2013.

- Tim Nader, a member or elected “trustee” of the Southwestern Community College governing board, commented that ACCJC is not widely accepted because of its sanctioning of colleges whose elected board members fulfill their duty to represent their constituents by asking questions and raising concerns about college activities. Mr. Nader explained that at his college there was evidence of a corrupt administrator, yet ACCJC

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sanctioned the college because a board member blew the whistle on the corruption. He wrote that ACCJC expected board members to “listen only to our administrators, and avoid if possible all communication with faculty and students.” He expanded, “During my first two years I lost track of how many times I heard the majority of the colleges being sanctioned by ACCJC ... [over] ‘governance issues’ meaning that one or more Board members were not following the Beno model of governance. At one conference, Dr. Beno related a college had been sanctioned because a Board member explained his dissenting vote on an issue to the media (‘Speak with one voice’ - meaning do not express dissent - was one of the more blatantly un-American slogans repeatedly drummed into trustees at accreditation training sessions.)” Mr. Nader also explained that when his college objected to ACCJC’s special assessment to cover its fees, ACCJC threatened the college with the loss of its accreditation should it fail to pay the assessment.

- Bruce Neuburger has taught ESL at City College of San Francisco for 19 years. His comments emphasize the gap between the effective accreditation process he has experienced at the adult school and ineffective accreditation process conducted by ACCJC. He wrote,

“At the Adult School - in this case San Mateo Adult School – we’ve had a regular process of accreditation every 5 years. So I’ve witnessed this process a number of times. This accreditation was conducted by WASC (Western Association of Schools and Colleges). In my experience the accreditation teams were teacher peers and administrators who understood education and were there to honestly evaluate the school, its programs and curriculum, its system of evaluations, promotions, and so on. It has been, at the adult school, a transparent process with high degree of communication between teachers and evaluators. And while evaluations were not without criticism at times, it was apparent that the criticisms had a basis, having derived from investigation and evaluation of the school’s performance obtained through reports, conducting interviews, observations and group discussions – done in the spirit of improving the quality of education. And the process was transparent....”

The contrast with the ACCJC accreditation process at CCSF, where I also teach, could hardly be more dramatic than that described above. In 2012 when the ACCJC came out with their evaluation of CCSF from what I could see there was not even a hint of any real collaborative effort nor any sense at all that they had conducted a process to help the college improve. The entire process seemed designed, not to evaluate honestly the academic performance of the school, but rather to justify actions against the college that appear to have been conceived of even before the “evaluation” process was completed ...”

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- Richard Greenspan is an educator, working as an Instructor in Automotive Technology at the College of Alameda. He writes,  
  
“I have been working in this capacity for over 35 years. I have seen a number of accreditation visits by ACCJC at the College of Alameda, and it is my firm belief that the current President and Board of the ACCJC have strayed far away from the actual intent of accreditation to a process which is dictatorial and vindictive.”
- Renee C. Fraser, an Assistant Professor of History at Moorpark College, wrote that despite a lack of serious deficiencies, ACCJC placed the college on probation in 2012 because ACCJC disapproved of an allegedly disruptive member of the College’s governing board, and found fault with the failure of the rest of the board to curtail that behavior.
- Howard Stahl, is a Computer Science professor at Santa Monica College and an officer of the Santa Monica Faculty Association. Mr. Stahl wrote how ACCJC is not applying standards that are widely accepted, in particular by demanding that colleges “prefund” retiree health benefits according to a formula devised by a private organization named GASB. His comment also addresses other violations of federal regulations that arise out of the unnecessary pre-funding of these benefits, a subject that is governed by State policy.

The more than 75 written comments attesting to ACCJC’s lack of “wide acceptance” and insufficient capability, should now be considered by the ED. Together they reveal an ACCJC that is not widely accepted and has been proven incapable of accumulating the financial and administrative capability to meet the Secretary’s criteria for recognition.

**2. ACCJC was found by a court to have committed serious violations of federal regulations.** In February 2015, a judgment and injunction were issued by the Superior Court of the State of California, finding that the ACCJC had failed to provide CCSF notice of alleged deficiencies or an opportunity to respond, before disaccrediting the College. The court concluded that ACCJC had violated 34 C.F.R. §§ 602.18(e), 602.25(d), and California common law fair procedure.

- The Court concluded that ACCJC had willfully refused to notify CCSF of deficiencies identified by the Commission, in regard to standards which the evaluation team had concluded the College satisfied, undermining the acceptance of ACCJC. The Court’s conclusion that ACCJC also denied CCSF its right under § 602.25 to respond to the alleged deficiencies identified by the Commission, is equally powerful.
- The Superior court also concluded that ACCJC had violated federal regulations when it appointed only one academic to the eight person “Show Cause” evaluation team in 2013,

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and when its process for selecting ACCJC commissioners in 2010 involved an apparent conflict of interest.

These legal violations by ACCJC became well known. Every day the courtroom was packed with observers, many of them educators from California community colleges. Each day the news media reported on the trial. When the court issued its decision, it was the subject of media reports in all major and most local California newspapers, in television reports, and in reports from several major national media outlets, which cover higher education, such as *Inside Higher Education* and the *Chronicle of Higher Education*. ACCJC's violations of federal regulations found by Judge Karnow in his detailed decision seriously undermine the acceptance of ACCJC.

Since the decision was issued, first as a tentative decision in January 2015, and then as a final decision on February 17, 2015, the news media continue to report irregularities of the ACCJC. Wide public dissemination of ACCJC's violations of federal regulations and other improper actions undermine wide acceptance of ACCJC.

The ED has not yet considered the decision of the San Francisco Superior Court. The Court's decision found ACCJC violated the due process rights of City College in matters that support the Secretary deciding to cease recognizing the ACCJC as a reliable accreditor.

**3. ACCJC will be subjecting CCSF to a Restoration Status accreditation review in late 2016 and January 2017 that denies the College critically important due process rights, thereby violating 34 C.F.R. § 602.25.** This process places the students, faculty, staff and residents of San Francisco at risk. This is because Restoration Status strips the College of its rights under § 602.25.

In June 2014, the ACCJC created a new mechanism to address the situation raised by the disputed disaccreditation of CCSF, called Restoration Status. ACCJC admits that **Restoration Status was created especially for CCSF** – Dr. Beno testified to this fact at the NACIQI meeting of Dec. 17, 2015:

“... so it was a real quirky, **customized design to create a status for San Francisco City College.**” (Transcript, p. 46; **Exhibit 18**, emphasis added)

Having customized a process to temporarily continue CCSF's accreditation under a cloud of uncertainty, ACCJC deliberately excluded the due process rights of notice, reply, review, hearing and appeal that are expressly granted in § 602.25, and are of critical importance in federal law. This deliberate elimination of due process leaves the Commission with absolute, unfettered power in making a decision about CCSF's continued existence.

While Restoration Status provided CCSF additional time to meet ACCJC standards, much like a good cause extension would have done, Restoration Status fails to comply with the minimal, mandatory federal due process requirements contained in 20 U.S. C. § 1099b(a)(6), and 34 C.F.R. § 602.25. Both the statute and regulations provide that these due process protections

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are intended to apply “throughout” the accreditation process, and to “withdrawal” of accreditation decisions.

- These due process procedures are intended as a safeguard against erroneous or prejudicial decision-making, designed to assure that a college receives at a minimum, a report delineating deficiencies, is afforded a fair opportunity to respond to those claimed deficiencies, and may exercise the right to an appeal hearing before a neutral hearing panel to dispute disaccreditation, **before** a disaccreditation can be finalized.
- These processes are intended to protect not just a college, but also its faculty and staff, and of course, its current and prospective students. ACCJC, as the recognized accreditor for all of California’s community colleges, has a responsibility to the 2.1 million students, which means it cannot risk making an adverse decision without first affording a college, its constituents, and the public, a fair opportunity to appeal alleged deficiencies. This is because a mistaken or prejudicial decision will have catastrophic consequences. Yet ACCJC asserts that its Restoration Status procedure should have immediate effect, a process that is inconsistent with its public interest responsibilities.

ACCJC has made public statements in which it has emphasized that Restoration Status comes without due process. (See ACCJC announcement dated June 11, 2014; **Exhibit 19**) That ACCJC adopted and is now prepared to apply aspects of its new Restoration Status policy which violates both the HEA and the Secretary’s regulations highlights its unreliability as a federal accreditor.

**4. The ACCJC lacks the fiscal and administrative capability to carry out its accreditation activities, and therefore is not in compliance with 34 C.F.R. § 602.15.** The ED found that ACCJC was not in compliance with § 602.15(a)(3) in its letter dated August 13, 2013 regarding CFT’s Complaint. The essence of this violation was two-fold: **ACCJC lacked a policy that clearly specified the requirements for sufficient academics on an external evaluation team, and ACCJC had repeatedly appointed too few — and sometimes no — academics to its evaluation teams.**

- In 2012 the ACCJC policy had no requirements – it merely stated that: “Typically, a team has several faculty members.” (2012 Team Evaluator Manual, p. 4; **Exhibit 20**) And in many cases ACCJC had appointed few, if any, academics to its teams. (See CFT 2013 Complaint). While ACCJC had no written definition of “academic” in its manuals and written policies, it has insisted that an “academic” should be defined to include administrators.
- The ED’s staff report of December 2013 concluded that ACCJC “does not specifically require ... adequate representation” of academic personnel on evaluation teams. (**Exhibit 4, p. 13**, citing Aug. 13, 2013 Gilcher letter to Beno)
- The ED found in 2013 that ACCJC had placed but 3 academics on a 16-person team that

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evaluated CCSF in 2012. City College of San Francisco’s 2013 team had but 1 out of 8. (See CFT Complaint of April 30, 2013, p. 196, **Exhibit 21**, and **Exhibit 2**). CFT’s 2013 complaint proved that ACCJC had placed no academics on many teams, and that overall, it placed academics on teams at an abysmal rate of 18%.

- The ED’s August 13, 2013 letter specified that the ACCJC “must demonstrate that it ensures that both academic and administrative personnel are adequately represented on its evaluation teams.” *Id.* Despite being aware of this requirement for the last 3 years, ACCJC remains an unabashed scofflaw.
- The ED has been clear since at least 2012 that an academic should be “someone currently or recently directly engaged in a significant manner in postsecondary teaching and/or research.” (ED’s 2012 Guidelines p. 24; **Exhibit 22**)
- Despite the ED’s clear definition and admonition, ACCJC has stubbornly refused to adopt a policy that defines and requires adequate numbers of academic personnel on evaluation teams. Further, the most recent ACCJC “Team Evaluator Manual” (2015) defines academic too broadly to include “faculty, deans, division / department chairs, directors, provosts, vice presidents whose **primary professional responsibilities are in instruction or instructional support.**” (ACCJC 2015 Team Evaluator Manual, p. 4, **Exhibit 23**) A vice president or dean with “professional responsibilities” in instruction is not automatically an “academic.”

In his decision on ACCJC’s “appeal” issued January 4, 2016, the Secretary emphasized that “OPE found ACCJC’s site team composition inadequate even after ACCJC made a required policy change designed to ensure academic representation.” (**Exhibit 10, p. 12**) The policy change, to add an overbroad definition of an academic, remains overbroad.

In fact, ACCJC continues to appoint some teams that have too few or no academics. For example, consider the following from the evaluation teams whose reports ACCJC considered at the Winter and Summer 2016 Commission meetings:

<b>Winter 2016 Commission Meeting</b>			
<b>Institution</b>	<b>Team Totals</b>	<b>Academics</b>	<b>Percent</b>
Chabot	10	2	20
Sacramento City	10	2	20
American Samoa	8	1	12.5
<b>Summer 2016 Commission Meeting</b>			
<b>Institution</b>	<b>Team Totals</b>	<b>Academics</b>	<b>Percent</b>
Los Angeles Community College District	10	0	0
East Los Angeles	11	2	18.2
Los Angeles Southwest	10	3	30
Los Angeles Valley	10	2	20
Clovis	4	1	25

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When CFT / AFT 2121 filed its 2013 complaint, ACCJC's teams had averaged about 23% academics for the previous 6 years. (See CFT April 30, 2013 Complaint, Attachment 8; **Exhibit 24**). It still fails to consistently appoint a sufficiently representative complement of faculty to evaluation teams. ACCJC presently appoints still too few academics when nearly 75% of the community college academic employees are academic faculty. Because faculty, more than any group, are familiar with excellence in education, ACCJC's continued under-appointment of faculty leads to misunderstanding and misapplication of the standards, and the inaccurate assessment of academic quality.

Under orders from the ED to adopt a policy that provides for sufficient academics, ACCJC has instead refused to come into compliance with federal requirements. Under ACCJC's new definition of an academic, someone who has never served as a teacher, librarian or counselor, is considered an academic. Indeed, ACCJC admits this is the case. At the civil trial, ACCJC Vice President Krista Johns was asked,

Question (By Ms. Mere): So, Miss Johns, I just need a yes or no answer to this. So I'm going to ask it again. **Under the ACCJC's definition of academic, is it possible that an individual who has never taught in the classroom could be considered an academic?**

Answer (by Ms. Johns): **Yes.** (Trial Tr. 834:24-835:23; **Exhibit 25** (emphasis added).)

This illustrates why it can never be a reliable regional accreditor, and why it cannot be trusted to fairly and objectively evaluate City College of San Francisco in Fall 2016, when CCSF will be exposed to ACCJC's decision-making process without the protection provided by due process.

CFT's April 30, 2013 Complaint focused on the composition of ACCJC's appointed evaluation teams and its inability to avoid actual or apparent conflicts of interest as demonstrating its failure to comply with § 602.15. Since 2013, more and varied examples of ACCJC's lack of compliance with § 602.15 have arisen, which are discussed below. These include ACCJC's internal administrative and financial difficulties, its inability to accurately report relevant information to the public, its attempts to redefine "recommendations to improve" as "deficiencies," and recharacterize the accreditation history of City College of San Francisco, and its failure to provide correct information to the public about the outcome of the People's case against ACCJC.

***ACCJC also has questionable fiscal resources.*** ACCJC has been incurring substantial fees and costs, issuing assessments to its members, raising questions about its fiscal capacity. ACCJC overall suffered a considerable loss of funds in 2013-2014. Overall, ACCJC reported revenue of \$3,082,184 during 2013-2014 and total expenses of \$4,672,785, with a deficit of revenue less expenses amounting to negative \$1,590,601.

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Given ACCJC's various legal and administrative entanglements, ACCJC's financial capability is open to question. Both its finances and its consistent inability to come into compliance with ED requirements regarding academics on visiting teams put ACCJC out of compliance with 34 C.F.R. § 602.15.

### **III. ACCJC Is Not Widely Accepted as Required by 34 C.F.R § 602.13, and Has Lost the Confidence of its Constituents and the Academic Community In the California Community Colleges**

The law demands that an accrediting agency, to be recognized by the Department, must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted by educators and educational institutions.

ACCJC cannot demonstrate the wide acceptance and support of its policies, procedures, accreditation standards and that its decisions are widely accepted by educators and educational institutions.

To the contrary, ACCJC has a notorious reputation:

- As a decision-maker that increased deficiencies to CCSF without notice to, or offering an opportunity to respond.
- As an agency that tried to rewrite history and falsely claimed that CCSF had been "deficient" in complying with ACCJC standards from 2006 until 2012.
- As an agency that appointed teams with few and sometimes no academics.

#### **A. ACCJC Has Persistently Misrepresented the Prior Accreditation of CCSF**

ACCJC's attempt to rewrite the accreditation history of CCSF began in 2012 and continued into the civil trial in 2014. ACCJC's 2012 evaluation team, and later the Commission itself, grossly mischaracterized CCSF's 2006 evaluation by ACCJC as well as subsequent events. The Commission announced on July 2, 2012, that CCSF was being sanctioned because, *inter alia*, it had failed to satisfactorily address **recommendations** it had been given during its 2006 re-accreditation. However, the recommendations CCSF was given in 2006 were not to correct deficiencies. Rather, the suggestions were for "quality improvement."

- To meet the standards in 2006 and 2012, a college was not required to implement recommendations made for quality improvement. ACCJC has never included suggestions or recommendations for quality improvement to be treated as mandatory requirements within its Standards and Requirements. Hence, the College could not be sanctioned in 2012 for allegedly failing to implement suggestions for quality improvement offered in 2006.

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- ACCJC deliberately overstated the importance of recommendations for quality improvement, and it did this repeatedly. It first cited CCSF in both the 2012 evaluation team report and July 2012 action letter placing CCSF on Show Cause. Then ACCJC cited CCSF’s history of non-compliance with the standards as grounds to disaccredit the College in July 2013. And it has continued this charade in addressing the public, offering this “history” to justify its disaccreditation decision.
- An ACCJC website file entitled “Answers to Recent Questions,” and subtitled “Answers to Questions Received While the Injunction Process Was Pending” was posted for the public at some point, and covers events through at least February 2015. It is still prominently displayed, and perpetuates ACCJC’s misrepresentations about CCSF’s past accreditation history. For example, the document attempts to explain away this conclusion in ACCJC’s 2006 evaluation team report:

“The visiting team validated that the college meets eligibility requirements and complies with the standards of accreditation, as required by [the ACCJC].” (ACCJC Answers to Recent Questions, p. 2; **Exhibit 26**)

ACCJC attempts to make the case that the above quote by ACCJC does not mean what it plainly says, referring to a recommendation given to the college on developing a “financial strategy,” and then asserting that “the term ‘recommendation’ was used to provide notice to the college of its deficiencies and noncompliance.” *Id.*, p. 3.

ACCJC’s “answer,” that CCSF had deficiencies in 2006, and that they were identified by the “recommendations,” ignores the Court’s conclusion that “the Commission did not at [2006 or] ... at any time between 2006 and 2012, find that City College failed to ... meet any accreditation requirement.” (J. Karnow, Statement of Decision, Feb. 17, 2015, at p. 48; **Exhibit 27**)

- In announcing its newly created **Restoration Status policy**, the ACCJC again misrepresented City College’s accreditation history, declaring:

**“...the [ACCJC disaccreditation] decision was made due to years of inaction by CCSF to address serious deficiencies identified through peer reviews** and acknowledged by the college. These deficiencies, spreading across almost all areas of the Accreditation Standards, severely impacted academic quality and the operational sustainability of the college.” (**Exhibit 19**, emphasis added)

- In reality, ACCJC’s rationale that CCSF’s disaccreditation was justified by “years of inaction” was found to be **false** by Judge Karnow. Judge Karnow ruled on February 17, 2015, after the City Attorney’s trial, that ACCJC had recharacterized “recommendations to improve” – which ACCJC made to CCSF in 2006 and afterward – as deficiencies in order to justify its disaccreditation. The Court held,

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“Beginning in 2006 the Commission raised various concerns regarding City College’s future ability to comply with accreditation standards. **But the Commission did not at that time, or at any time between 2006 and 2012, find that City College failed to meet any accreditation requirement.**” (Exhibit 27, p. 48, emphasis added)

ACCJC’s actions in mischaracterizing a college’s accreditation history, disregarding its duty to provide notice of deficiencies and its own due process rules helps explain why ACCJC is not widely accepted.

**B. The Court Found that ACCJC’s Commission Increased City College’s Deficiencies by Eleven Not Cited by the Evaluation Team, and Then Denied Written Notice of this Increase, Any Explanation for the Reasons for the New Deficiencies, and Any Opportunity to Dispute the Deficiencies**

After the 2013 show cause visiting team prepared a report, which identified 19 deficiencies, the report was made available to the College to check it for factual accuracy. The subsequent Commission action letter issued on July 3, 2013, identified 30 deficiencies, an increase of 11. However, except for reciting the new deficiency by the Standard identification number in a footnote, the College was given no notice whatsoever as to how it had violated the 11 additional standards.<sup>6</sup> All the College had was the team report, that found the college had met these 11 Standards.

Because the College had no notice that the Commission planned to increase the number of deficiencies from 19 to 30, the College was deprived of any opportunity to address these additional 11 deficiencies when it addressed the Commission at its meeting in June 2013, before ACCJC issued the action letter that disaccredited CCSF.

- The Court found that there were “discrepancies between the Standards that the 2013 [ACCJC] Evaluation Team concluded were not met and the Standards that the Commission concluded were not met.” (J. Karnow, Statement of Decision, February 27, 2015) There were 11 such discrepancies – “new” deficiencies found by the Commission, not the visiting evaluation team. (*Id.*, note 57, p. 48)
- The Court also found that at the trial itself the ACCJC tried to redefine deficiency to be “the facts,” as opposed to the conclusion that a standard was not met, in a vain effort to support its illegal disaccreditation decision.

Judge Karnow again ruled against ACCJC’s effort to rewrite history:

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<sup>6</sup> The Commission said City College of San Francisco was deficient in meeting I.A.3., I.B.2., I.B.3., II.A.6., II.B.4., III.B.1., III.C.1., III.C.2., III.D.1., IV.A.1., without giving any reason. The team report had found the College met these standards.

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“I reject ACCJC’s definition of “deficiencies” as merely the “facts on the ground” that result in noncompliance. It is not a reasonable interpretation. . . I adopt the meaning urged by the People. Whether a factual finding amounts to a “deficiency” is a conclusion arising from the application of accreditation standards to factual findings. A deficiency is not noted or identified until the underlying conduct is evaluated in connection with an accreditation standard, and an insufficiency is found. . . This interpretation means that the Commission violated 34 C.F.R. § 602.18(e).” (*Id.* at 52)

ACCJC’s actions in mischaracterizing a college’s accreditation history, disregarding its duty to provide notice of deficiencies and its own due process rules helps explain why ACCJC is not widely accepted.

### **C. Mounting Evidence That ACCJC Is Not Widely Accepted**

**1. California State Auditor** – Following ACCJC’s disaccreditation of City College, the Joint Legislative Audit Committee of the California Legislature tasked the State Auditor to conduct an audit of ACCJC’s accreditation activities. The August 21, 2013 vote was 10-1, after State Senator Jim Nielsen made a statement in which he noted that,

“Senator Beall and I met with President Barbara Beno in my office. In all my career, in my thousands of meetings with agency individuals — representatives, secretaries, etc. — I have never dealt with a more arrogant, condescending, and dismissive individual.”

The State Auditor subsequently studied ACCJC’s activities and reached several conclusions, in a report released in June 2014, including:

The ACCJC is inconsistent in applying its accrediting process.

- In the 21 institutions studied, ACCJC allowed 6 of them up to 6 years to come into compliance.
- The Commission’s deliberations regarding an institution’s accredited status lacked transparency.
- The Commission issued sanctions at a much higher rate than other recognized accreditors.

ACCJC’s President (Dr. Beno) responded to the Report in a letter dated June 9, 2014, by **making wild accusations**, included in the final pages of the 74-page report, which the State Auditor convincingly rebutted, further showing why ACCJC is not widely accepted:

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ACCJC accused the Auditor of presenting a factually inaccurate and “incomplete” report, with comments of a “harmful nature” which are “defamatory against the ACCJC” – when in fact it was ACCJC that refused to present information the Auditor requested.

- The ACCJC asserted that the Auditor admitted it lacked legal authority to conduct the audit, an accusation the Auditor denied.
- ACCJC asserted the Auditor did not adhere to generally accepted auditing principles, which the Auditor denied.
- ACCJC claimed the Auditor’s staff lacked the necessary technical and subject matter expertise required, but the Auditor noted that this was false, and that ACCJC’s President and Vice President, Krista Johns, made no such claims in meetings with the Auditor.

The ACCJC is supposed to be an accreditor, not an auditor. The comments in this June 9, 2014 letter illustrate what Senator Nielsen expressed at the August 21, 2013 hearing: Beno’s letter is combative, arrogant and dismissive, even though ACCJC has no expertise itself in conducting an audit. **This is an accreditor that has proven time and again that it lacks the ability to be objective, non-confrontational, and non-retaliatory, and to admit its mistakes.**

**2. Over 75 third party comments on ACCJC’s request for renewed recognition were submitted to NACIQI.** A large number of educators, organizations and other individuals sent comments to NACIQI for its December 2015 meeting, as described earlier in this Complaint. Many of these comments addressed issues that were on appeal by ACCJC. Now that the appeal has been disposed of, this information is properly before the Department. It should now be considered.

Besides our reference above, it is important to recognize the breadth of the commenters:  
**Educators** - faculty - from numerous community colleges including: College of the Sequoias, Laney, Gavilan, College of Alameda, Citrus, Moorpark, Santa Monica, Los Rios, San Jose-Evergreen, Cerritos, San Diego-Mesa, Cabrillo, Fresno City, and many from CCSF; **Legislators and other elected officials:** US Congresswoman Jackie Speier, Assemblymember David Chiu, Assemblymember Phillip Ting; elected members of college Boards of Trustees; **Educators from other colleges** including CSU and UC Berkeley; **Representatives of organizations** such as the AAUP and various faculty organizations; as well as the California Labor Federation; and, **San Francisco City Attorney Dennis Herrera, who prosecuted the successful lawsuit by the People of the State of California against ACCJC.**

- Herrera’s Third Party Comment provides a strong case for why ACCJC is not widely accepted: ACCJC refuses to believe it has a legal obligation under 34 C.F.R. § 602.18(e) to give a college “a detailed written report that clearly identifies any deficiencies in the institution’s ... compliance with the agency’s standards.” ACCJC’s failure to recognize and fulfill this fundamental responsibility provides more than sufficient reason for it to be

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denied continued recognition by the Secretary.

In his letter City Attorney Herrera explained,

“... in order to defend its decision to terminate City College’s accreditation – a decision that was based in part on the alleged failure to meet standards the ACCJC had expressly told City College it had met – the ACCJC redefined the term ‘deficiencies,’ and then repeatedly took the position that it has no obligation to inform an institution that it fails to meet a standard.”

- The City Attorney lists several instances where the ACCJC expressly disavowed its duties:
  - On August 11, 2014, in opposing the People’s Motion for Summary Judgment, the ACCJC claimed that the word “deficiency” did not refer to a specific standard or substandard. Rather, ACCJC claimed it referred to the factual basis for the Commission’s “ultimate decision” that an institution fails to comply with a standard or substandard.
  - On October 14, 2014, at her deposition in the People’s case, ACCJC president Barbara Beno swore under oath that deficiencies are not failures to meet a standard or substandard, but behaviors that lead to noncompliance with standards.
  - On October 29, 2014, when questioned at trial, Beno testified under oath that a “[d]eficiency is a behavior at the institution that lead – or behaviors plural – that leads to noncompliance. It’s a description of facts on the ground at the college.” (Trial transcript at 433:134-15, Oct. 29, 2014; **Exhibit 28**)
  - Perhaps most disqualifying of all is this one: in its December 3, 2014 Post-Trial Brief the ACCJC claimed that it was the Commission’s right to ignore findings of the evaluation team that a college had met the standards, and instead conclude that, based on the same facts that the team had considered, that the college was deficient in meeting specified standards without giving prior notice to the College of the Commission’s different interpretation, and an opportunity to respond to it. (ACCJC’s Post Trial Brief in the People’s Case, filed Dec. 2, 2014; **Exhibit 29**)
- The City Attorney’s letter to NACIQI refers to the Superior Court’s determination, which indicates ACCJC’s unreasonable attempt to redefine “deficiency” so as to justify its action discrediting City College. The Superior Court ruled against ACCJC’s attempt. (**Exhibit 27 pp. 50-54**) The Court first explained that 34 C.F.R. § 602.18(e) requires an accreditor to provide institutions a “detailed written report” that “clearly identifies any *deficiencies* in the institution’s ... compliance with the agency’s standards.” The Court noted that the regulation uses deficiencies to mean “failures to meet specific accreditation

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requirements” (*Id.*, p. 51, note 62). It then explained the Commission’s position that it could find an institution failed to meet a standard for purposes of terminating accreditation, “as long as the Commission’s decision is based on facts found by the evaluation team,” even where the failure to meet the standard “had not been previously raised by ACCJC.” *Id.* at pp. 51-52) And then it set forth its conclusion that ACCJC was wrongly attempting to redefine “deficiency”:

- “I reject ACCJC’s definition of ‘deficiency’ as merely the ‘facts on the ground’ that result in noncompliance. It is not a reasonable interpretation. Under that view, if the facts on which the Commission’s decision is based are somewhere in the record, the reviewed institution has an opportunity to respond to those facts. But an institution confronted with a lengthy report with a host of factual determinations accompanied by a determination, based on the facts in the same report, that the institution is in compliance with an accreditation requirement cannot possibly be thusly afforded notice that it is charged with failing to comply with that same accreditation requirement on the same facts. [citing § 602.25(d) and ACCJC policy].”
- “I adopt the meaning urged by the People. Whether a factual finding amounts to a ‘deficiency’ is a conclusion arising from the application of accreditation standards to factual findings ... This interpretation means that the Commission violated 34 C.F.R. § 602.18(e) ... with respect to the 2013 evaluation.” (*Id.*, pp. 52-53)

The Commission’s repeated and futile efforts to redefine deficiency through an absurd argument in order to justify its action disaccrediting CCSF reveals an accreditor lacking integrity, good judgment and responsibility. As a result of this, ACCJC has lost the respect of its member institutions, CEOs, the State Board of Governors, faculty from around the State, and the public. It clearly is not entitled to further recognition by the Secretary.

**3. The California Community Colleges Board of Governors and the CEOs of the California Community Colleges.** The Board of Governors of the California Community Colleges is appointed by the Governor to oversee the operations of the California community colleges. The BOG met and adopted a resolution in March 2016, and asked a planning group to “bring to the Board of Governors the necessary information for the Board to recommend a new accreditor for the California Community Colleges to be submitted to the U.S. Department of Education for approval.” In addition, in April 2015, the BOG amended its regulations to end ACCJC’s monopoly designation as the community colleges’ accreditor, replaced by a provision that took effect May 22, 2015 providing that, the accreditor shall be an agency recognized Accreditation shall be recommended by the State Chancellor and approved by the Board of Governors, and be recognized and approved by the Secretary. (See amended Cal. Code Regs., tit. 5, § 51016).

The state Community Colleges’ CEOs voted in March 2016 to pursue a new model of accreditation.

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**4. News Media.** The extent of news media coverage illustrates how interested the people of the State of California are in the activities of the accreditor of the California community colleges. This is a testament to the importance of the public community college system that annually educates over 2 million California residents, which is five percent of the State's population. These students have friends, children, spouses, students, and relatives who depend on the community college for an inexpensive but high quality college education or vocational training, and which provide a steady supply of highly qualified employees for San Francisco and Bay Area employers. When an accreditor disaccredits a popular college that is recognized as a leader in California, for reasons such as those proven by the People and argued by CFT/AFT to be invalid, the accreditor is going to be subject to scrutiny. This helps explain why ACCJC is not, and can never be, widely accepted.

- The San Francisco *Chronicle* began its coverage of CCSF's accreditation in 2012, after ACCJC placed the college on Show Cause in July. Over the next couple of years the *Chronicle* followed ACCJC's actions, which ultimately led to its turn against ACCJC.
  - On November 16, 2015, *Chronicle* reporter Nannette Asimov wrote an article regarding the Board of Governors 14-0 vote to replace ACCJC. Board President Geoffrey Baum stated, "The Board of Governors is looking to the future needs of our colleges and striving to ensure the highest level of quality for the 2.1 million students we serve' . . . 'There is widespread agreement among faculty, staff, trustees and other leaders within our system that the current accreditation process needs significant improvement.'" Additionally, Asimov wrote that State Chancellor Brice Harris told the board he had received "nearly 200 letters of support for replacing the commission." (SF *Chronicle*, "College accrediting commission for California ousted," pp. 2-3; **Exhibit 17**)
  - On November 17, 2015, an editorial was released. The editorial declared the Board of Governors was correct to unanimously vote to replace ACCJC. Additionally, it stated that ACCJC's "handling of City College of San Francisco exposed the Accrediting Commission for Community and Junior Colleges as arrogant, stubborn, nontransparent and obsessed with minutia instead of its main mission: assuring quality education for the students." (**Exhibit 17, p. 1**) This editorial is just another indicator of ACCJC's standing as a rogue agency that is not widely accepted.
- The media's disdain for ACCJC has not been confined to only San Francisco. As ACCJC continued engaging in arbitrary and illegal actions, other media outlets began to publish articles against the ACCJC. After the California State Auditor released its audit report regarding ACCJC's practices and actions, the LA Times released an article stating that the audit found ACCJC is "arbitrary in enforcing rules among the state's 112 two-year schools, conducts too much of its business behind closed doors and called the commission's appeals process inadequate." (June 26, 2014, Los Angeles *Times*, "Audit criticizes panel for move to revoke S.F. college's accreditation"; **Exhibit 17**).

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- Further, the article highlighted a statement made by ACCJC’s spokesman David Hyams, where he stated the audit conducted by the California State Auditor “‘is not a real audit. . .It draws conclusions about accreditation without the context and facts necessary for evaluation and without the expertise about federal laws and regulations that apply to accrediting agencies.’” (*Id.* at 3).

#### **IV. ACCJC’s Restoration Status Process Denies Due Process in Violation of Section 602.25**

Restoration Status is a form of sudden death disaccreditation. The City Attorney recognized that “restoration operates as a Trojan horse: promising City College an opportunity to ‘restore’ its accreditation, while enticing the institution into a precarious position.” (City Attorney’s Post-Trial Brief, filed Dec. 2, 2014, at 85:7; **Exhibit 30**) This Complaint does not challenge the decision of ACCJC to grant Restoration Status to City College of San Francisco. Rather, the Complaint addresses the ACCJC’s failure to include appeal rights for any college, including City College, whose accreditation is withdrawn or terminated at the completion of the Restoration Status review. As explained below, the exclusion of due process is a serious violation of Section 602.25.

##### **A. The History of Restoration Status**

On July 2, 2012, City College of San Francisco was placed on Show Cause by ACCJC, and given 9 and ½ months to come into compliance. CCSF prepared a self-evaluation (a “show cause” report), ACCJC sent a team of 8 to review the College, and on July 3, 2013, ACCJC issued its decision disaccrediting the college, effective July 31, 2014. In August and September 2013, lawsuits were filed against ACCJC by the City Attorney of San Francisco, on behalf of the People of the State, and the California Federation of Teachers and others, seeking to enjoin the ACCJC’s finalization of its decision, arguing that ACCJC had acted in violation of its policies, and federal and state law, in making this decision.

On January 2, 2014, San Francisco Superior Court Judge Curtis E.A. Karnow determined to grant in part the motion for a preliminary injunction sought by the People. On January 30, 2014, Judge Karnow issued the preliminary injunction, which enjoined the ACCJC from finalizing the disaccreditation which was to have taken place on July 31, 2014.

The Court then set about managing the case as it entered the discovery phase, and moved towards a trial. Meanwhile, many people began to look at ways of extending the enjoined July 31, 2014 deadline that ACCJC had set, allowing City College more time to satisfy the ACCJC’s demands. On April 12, ACCJC leaders Sherrill Amador and Steven Kinsella wrote an article in the San Francisco *Chronicle* urging the college to give up its accreditation, and apply for “candidacy” to remain open. This idea was quickly quashed as numerous voices, including City College’s new Chancellor, noted the harm this would cause to the College and its students.<sup>7</sup>

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<sup>7</sup> See Letter, Chancellor Tyler to community, April 14, 2014. (**Exhibit 31**)

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On May 9, 2014, Honorable Nancy Pelosi, the Democratic Leader of the U.S. House of Representatives, wrote ED seeking clarification about whether ACCJC had “the authority to implement policies to accommodate CCSF with additional time ‘for good cause’ to come into compliance.” (Letter, Pelosi to Mahaffie, May 9, 2014, **Exhibit 32**).

On May 13, 2014, the San Francisco *Chronicle* published a story headlined, “City College of S.F. could get more time to shape up,” quoting federal education officials telling the *Chronicle* on Monday May 12 that “the commission could adopt a policy allowing it to extend its July 31 revocation deadline to let the college avoid closure.” The *Chronicle* reported that on Monday May 15, Denise Horn, a spokeswoman for Secretary of Education Arne Duncan, told the *Chronicle* that the commission could “extend revocation deadlines indefinitely if doing so complies with their own policies.”<sup>8</sup> On May 14, 2014, the *Chronicle* published another story about this opportunity for the College to receive more time.<sup>9</sup>

On May 15, ACCJC’s leaders Beno, Amador and Kinsella met with the *Chronicle* and Beno derided the notion of an extension as “gibberish.”<sup>10</sup> ACCJC’s representatives added, falsely, that “they had told the college in 2006 that it needed to make repairs, but it failed to do so.”

On May 19, Senior Director Lynn B. Mahaffie wrote Congresswoman Pelosi that the ACCJC could give the College additional time:

“...the determination of how much, if any, of the two-year period should be provided to enable the institution to return to compliance, and the decision of whether to provide a good cause extension and for how long, are all matters entrusted to the judgment of the recognized accrediting agency.

In addition...the ACCJC has the authority to reconsider or rescind its accreditation decision so as to provide the institution with additional time to come into compliance within the two-year time frame, if such period has not run out, or to provide an extension for good cause.” (Letter, Mahaffie to Pelosi, May 19, 2014; **Exhibit 36**)

On May 27, 2014, Beno, Amador and Kinsella wrote to Congresswoman Pelosi asserting that the ED was wrong in its statement about “additional time” because CCSF had been on notice of its problems “for years.” In saying this, the ACCJC leaders made it clear they were referring to

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<sup>8</sup> San Francisco *Chronicle*, May 13, 2014, by Nannette Asimov. (**Exhibit 33**)

<sup>9</sup> See San Francisco *Chronicle*, May 14, 2014, “CCSF supporters press for extension to fix problems,” by Nannette Asimov. (**Exhibit 34**)

<sup>10</sup> See San Francisco *Chronicle*, May 15, 2014, by Nannette Asimov, quoting Dr. Beno saying, “It’s gibberish...” (**Exhibit 35**)

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“citations from 2006” it had issued City College, such that the College’s two-years to come into compliance expired in 2008! In fact, they wrote “The department took action against ACCJC over its having given CCSF too much time:

“Lynn Mahaffie’s letter appears to assert that ACCJC has the legal authority to rescind its 2013 withdrawal of accreditation from CCSF and give CCSF a good cause extension of indefinite duration to come into compliance... However, the letter actually confirms the opposite...

The Department itself in 2014 confirmed this point when it reviewed ACCJC’s application for continued federal recognition and found that we violated federal requirements because we failed to take adverse action against CCSF within the two-year regulatory period. In other words, the Department took formal enforcement against ACCJC this year before it found that we gave CCSF too much time to come into compliance. This contradicts the recent suggestion found in the Mahaffie letter that ACCJC may not rescind the withdrawal determination and give CCSF another opportunity to come into compliance. Providing that opportunity in the face of the Department’s formal enforcement finding against ACCJC would subject ACCJC to a loss of recognition by the Department and the Mahaffie letter would not prevent us from that result.” [footnote omitted, emphasis in original]. (Letter, Beno, Amador and Kinsella to Congresswoman Pelosi, May 27, 2014, p. 3; **Exhibit 37**)

ACCJC’s assertion that it had been punished by the Department for having given City College too much time to meet accreditation requirements is a mischaracterization of the ED letter to ACCJC dated August 13, 2013. In that letter, the ED cited the Commission as being out of compliance with four federal regulations, including §§ 602.18(e) and 602.20. The lack of compliance with 602.18(e) arose from ACCJC’s failure to provide institutions with a written report that clearly identifies any deficiencies. This was because ACCJC used “recommendations” to signify both deficiencies in meeting standards, and an area for improvement. The ED then explained that when it found deficiencies, “only once an institution is placed on an agency-defined sanction, is a deficiency required to be remedied within the enforcement timeline,” which is two years, unless a good cause extension is granted. The ED did not conclude that City College received notice of deficiencies in 2005, nor did it conclude that ACCJC should be found out of compliance because it failed to give City College no more than two years, starting in 2006, for deficiencies. In relying on the foregoing, and the ED’s assessment of ACCJC in its 2013-2014 review, ACCJC is again misrepresenting the situation.

In arguing in 2014 that it could not offer CCSF more time than 9 and ½ months to correct “deficiencies” because of non-existent deficiencies in 2006, ACCJC was not being forthright with the ED or the public. As of May 27, 2014, ACCJC’s mischaracterization of its evaluation of City College in 2006 had already been disputed by CFT, in its April 30, 2013 Complaint and by both CFT and the People in their lawsuits they filed in Fall 2013. As noted above, Judge Karnow later confirmed the allegations of the People when he ruled in his February 17, 2015 decision, that ACCJC had not notified City College of deficiencies in 2006.

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Meanwhile, on May 29, 2014, the California legislature – both the Senate and Assembly – passed unanimous resolutions calling on ACCJC to grant City College additional time to meet ACCJC demands.

ACCJC’s Commission met in closed session on June 5-7, 2014. Then, on June 11, 2014, ACCJC announced that it was proposing “a new accreditation policy” that “would permit any postsecondary institution notified of termination to apply prior to the effective date for restoration of its accreditation.”<sup>11</sup>

On June 11, 2014, ACCJC sent the Department a proposed policy on “accreditation restoration,” asking whether it was permitted by 34 C.F.R. § 602.20 (the “two-year rule”). On June 20, 2014, Jamiene S. Studley, Deputy Undersecretary, wrote ACCJC that “the Department considers the policy to be consistent with the provisions of 34 C.F.R. § 602.20 and its possible application to CCSF not to be in violation of federal recognition criteria regarding enforcement of accreditation standards.” This was the only regulation her letter addressed.

On July 28, 2014, City College wrote a letter to ACCJC requesting restoration status, and submitted an Eligibility Report. On July 30, 2014, CCSF submitted an amended Eligibility Report. On October 15, 2014, CCSF then submitted its self-evaluation report in application for Restoration Status. On January 14, 2015, ACCJC granted Restoration Status to CCSF. As discussed next, the Restoration Status policy that ACCJC adopted was defined by ACCJC as excluding federal due process under section 602.25, an action that violates the HEA and the regulations of the ED.

## **B. The Purpose of Restoration Status**

Restoration Status was created by ACCJC especially for City College of San Francisco, and was announced on June 11, 2014.

It cannot be denied that ACCJC created this status to deflect or “stay” the legal and other challenges that resulted from its unfair and unlawful disaccreditation of CCSF. ACCJC announced this new accreditation status five months before the civil trial in the case of the *People v. ACCJC*, while CFT’s lawsuit was being appealed by ACCJC, and while legislation was under consideration in Sacramento to bring needed transparency to the processes of any higher education accreditor delegated accreditation functions by the State of California.<sup>12</sup> It was on February 19, 2014 that AB 1942 was introduced in the California Legislature, to provide

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<sup>11</sup> **Exhibit 19.**

<sup>12</sup> CCSF should have received a good cause extension from ACCJC. ACCJC had given such extensions to more than 20 colleges for up to 8 years, during the period of 2006 to 2014. The Chancellor of the California Community Colleges recognized that this status would have been appropriate in a letter to ACCJC dated June 20, 2012.

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regulation of ACCJC’s procedures. The bill was amended several times before it was enacted on August 18, 2014, creating California Education Code section 72208, which requires that the accrediting agency for the community colleges will report to the Legislature on a biannual basis, any accreditation policy changes that affect the accreditation process or status for a California community college.

ACCJC also cited Restoration Status in support of its “Motion to Stay,” that is at least temporarily delay, the trial of the People’s lawsuit. (See ACCJC MPA in Support of its Motion to Stay etc., filed July 1, 2014, p. 10; **Exhibit 38**). ACCJC’s Motion to Stay was filed on July 1, 2014, and opposed by the People, who argued that Restoration was “less like a lifeline that more like a tightrope suspended over flames,” quoting an article in the San Francisco *Bay Guardian*. (People’s Opposition to Defendant ACCJC’s Motion to Stay Proceedings etc., filed July 8, 2014; **Exhibit 39**). ACCJC’s Motion to Stay was denied by the Court on July 16, 2014, leading to the trial that began on October 27, 2014. ACCJC relied on the creation of Restoration Status in an unsuccessful effort to convince the courts to dismiss the legal challenges filed by the City Attorney’s Office and the AFT. Meanwhile, City College remains balanced on that tightrope, with the end of the rope five months away, when ACCJC must issue a decision on City College’s future status as accredited or disaccredited.

In Restoration Status City College is currently considered “accredited, pending termination,” and facing further evaluation and decision by the accreditor. The ACCJC Restoration Status review of CCSF is about to commence.

### **C. The Due Process Provisions that ACCJC Must Fulfill**

Both the HEA and the Department’s regulation demonstrate that due process is a critical component of accreditation, one which must be satisfied by every recognized accreditor in regard to every action to withdraw accreditation. The HEA requires in 20 U.S.C. § 1099b(a)(6), as to every recognized accreditor, that:

“such an agency or association shall establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures that provide—

- (A) For adequate written specifications of ...
  - ...
  - (ii) identified deficiencies of the institution ...
- (B) For sufficient opportunity for a written response ... regarding any deficiencies ... to be considered by the agency or association –
  - (i) ...
  - (ii) prior to final action in the evaluation and withdrawal proceedings ...
- (C) upon the written request of an institution ... for an opportunity ... to appeal any

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adverse action under this section, including ... withdrawal ... or termination of accreditation ... prior to such action becoming final at a hearing before an appeals panel ...” (20 U.S.C. §1099b)

It is self-evident that the Congress expects the due process afforded in this section to be provided by every recognized accreditor, for every action that denies, terminates or withdraws accreditation. The key departmental regulation is C.F.R. § 602.25 which reflects §1099b(a)(6) preoccupation with due process, by the following procedures:

“The agency must demonstrate that the **procedures it uses throughout the accrediting process satisfy due process**. The agency meets this requirement if the agency does the following: ...

(c) Provides written specification of any deficiencies identified at the institution or program examined.

(d) **Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies** identified by the agency, **to be considered by the agency** within a timeframe determined by the agency, and **before any adverse action is taken**.

(e) **Notifies the institution or program in writing of any adverse accrediting action** or an action to place the institution or program on probation or show cause. **The notice describes the basis for the action**.

(f) **Provides an opportunity**, upon written request of an institution or program, **for the institution or program to appeal any adverse action prior to the action becoming final**.

\* \* \*

(iv) **Affirms, amends, reverses, or remands the adverse action**.

(g) **The agency notifies the institution or program in writing of the result of its appeal and the basis for that result...**” (emphasis added)

Besides tracking the due process provided by section 1099b(a)(6), the ED provides additional protections, including the right of the appeals panel to affirm, amend, or reverse the adverse action, or remand it to the accreditor’s commission for further consideration. (§602.25(f)(iv)).

These due process provisions are clear and address the key elements of due process:

1. Written specification of deficiencies.
2. A sufficient opportunity to respond in writing to alleged deficiencies.

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3. Notice of any adverse action and the basis for adverse action.
4. The right to appeal any adverse action before it becomes final.

As is evident, ACCJC's Restoration Status ignores the fundamental due process requirements of the HEA and Part 602 of the ED's regulations, requirements which must be afforded any institution that faces an accreditor's review that may lead to withdrawal of accreditation.

#### **D. The Particulars of Restoration Status**

Restoration Status was something which CCSF had to qualify for by making a request and submitting a detailed Application demonstrating compliance with Eligibility Requirements, undergoing a visit, a comprehensive evaluation, a self-evaluation, and eventually a decision by the ACCJC. City College was granted and placed on Restoration Status on January 14, 2015. Once placed on Restoration Status, ACCJC identified CCSF as being "accredited, pending termination."

Restoration Status review has some powerful and unique provisions that distinguish it from every other review that ACCJC undertakes, which are set forth in the ACCJC's Policy on Commission Actions on Institutions.<sup>13</sup>

#### They provide as follows:

1. Restoration leaves intact all previous ACCJC decisions and actions on an institution's accreditation. This is important because prior history is applied by ACCJC to determine future sanctions.
2. To be granted Restoration Status an institution must show that it "fully meets all Eligibility Requirements and has demonstrated either its compliance with all of the Accreditation Standards and Commission policies or the ability to fully meet all Accreditation Standards and Commission policies. At the conclusion of the Restoration Status period, an institution must demonstrate its compliance with the Eligibility Requirements, Accreditation Standards and Commission Policies."
3. At the conclusion of the Restoration Status period, "if in the judgment of the Commission the institution is not in compliance with the Commission's Standards, then the withdrawal implementation [of accreditation] will be reactivated and the effective date will be immediate. There will be no further right to request a review or appeal in this matter."

These terms are Draconian, and out of compliance with § 602.25 because:

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<sup>13</sup> ACCJC Policy on Commission Actions on Institutions, 2015 ed., pp. 45-46; **Exhibit 40.**

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1. Although § 602.25 requires that a recognized accreditor “Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final,” withdrawal of accreditation during Restoration Status calls for an immediately final disaccreditation, with no appeal whatsoever.
2. The accreditor ignores the requirement of § 602.25 that it “notifies the institution ... in writing of the result of its appeal and the basis for that result.”
3. ACCJC cannot demonstrate to the ED that the “procedures it uses throughout the accrediting process satisfy due process” if there is no appeal from disaccreditation at the conclusion of Restoration Status.

**E. ACCJC Engages in the Inconsistent Application of its Standards in Violation of § 602.18(b) because Colleges on Restoration Status Are Denied Due Process While Colleges That Are Not on Restoration Status and Disaccredited, Even Colleges Given Good Cause Extensions, Are Given Due Process**

If a college on Restoration Status is disaccredited, its accreditation is summarily terminated and this disaccreditation is **immediately effective**, without any chance to respond, and without any staying of the decision and application of due process. Yet any other institution that suffers adverse action under 34 C.F.R. section 602.25 is given due process: notice of any deficiencies found, a chance to reply, the right to appear before the Commission and defend itself, the right to request “review”, and the right to an appeal hearing to a neutral body that has the authority to reverse the disaccreditation decision. This is a substantial inconsistency in treatment, thereby also violating **34 CFR § 602.18(b)** which requires that an accrediting agency “has effective controls against the inconsistent application of the agency’s standards.”

In treating denial of accreditation through Restoration Status differently than other adverse actions – situations where accreditation is lost, revoked, withdrawn, denied or suspended – ACCJC is disregarding the meaning of “adverse action” under 34 C.F.R. section 602.3. There the regulations broadly provide that an adverse action means “the denial, withdrawal, suspension, revocation or termination of accreditation ... or any comparable accrediting action an agency may take against an institution or program.” Under Restoration Status, an institution that is “not in compliance with the Commission’s standards” at the conclusion of the “Restoration Status period” suffers the “reactivation” of the “implementation” of the “withdrawal” of its accreditation, which is effective immediately. It is patently obvious that this situation amounts to an adverse accrediting action under section 602.3, for this action constitutes the withdrawal of accreditation. Hence the due process rights that attend to such action under § 602.25 must be provided.

The above-referenced due process rights are available to every college given “good cause” extensions of multiple years to meet Commission Eligibility Requirements, Standards and policies. ACCJC has placed several California community colleges on “good cause” status in

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recent years. Each of them was entitled to these due process rights had the institution been disaccredited.

ACCJC could have given CCSF a “good cause extension” rather than offer Restoration Status. Federal law recognizes the right of an accreditor to provide good cause extensions of the “two-year rule” to achieve compliance. But ACCJC has never adopted a policy to implement this good cause extension right. Instead, it has offered this status on a haphazard basis, and rarely specified the reason it provided this status. While ACCJC has implied that having disaccredited the College it had to follow through, a letter from the Department to Congresswoman Nancy Pelosi, dated May 19, 2014 says differently,

“... the ACCJC has the authority to reconsider or rescind its termination decision so as to provide the institution with additional time to come into compliance within the two-year time frame, if such period has run out, or to provide an extension for good cause.”  
(Exhibit 36)<sup>14</sup>

ED has never decided whether ACCJC’s Restoration Status process is out of compliance with due process requirements. As we demonstrate, it certainly is out of compliance.

**F. Restoration Status’ Exclusion of Due Process Does Not Comply with the HEA or the Department’s Regulations Thereby Violating 20 U.S.C. § 1099b and 34 C.F.R. § 602.25**

It should be recognized that ACCJC has a history of denying due process to City College. The San Francisco Superior Court, found in its decision in the *People vs. ACCJC*, issued February 17, 2015, that ACCJC had committed serious due process violations and denied to CCSF both the required notice to CCSF, and a chance to respond.<sup>15</sup> These violations occurred when ACCJC increased the number of deficiencies identified by the visiting team, a total of 19, to 30, by adding 11 deficiencies not previously cited by the team.

At that point, ACCJC’s duty was clear - its own policies provided that the president of ACCJC would stop the proceedings, provide notice to the college, adjourn the matter until the next meeting of the ACCJC, and afford the college an opportunity to respond. (See ACCJC Policy on Commission Good Practice in Relations with Member Institutions, 2013 edition, p. 44;

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<sup>14</sup> As of May 2014, ACCJC had given City College only 9 and ½ months to come into compliance, in its letter of July 3, 2013.

<sup>15</sup> The Court explained that the People have shown that ACCJC violated the “unlawful prong of the UCL in the following ways: . . . (3) failing to provide a detailed written report that clearly identifies deficiencies in the institution’s compliance with accreditation standards in 2013, in violation of 34 C.F.R. § 602.18; and (4) failing to provide sufficient opportunity for a written response to deficiencies identified by the Commission in 2013 but not by the 2013 Evaluation team, in violation of 34 C.F.R. § 602.25 and common law fair procedure.” (Exhibit 27, p. 68)

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**Exhibit 41.)** Neither the president of ACCJC, Dr. Beno, nor the Commission itself, followed this policy.

Now the Commission and Dr. Beno will be involved in making another life-or-death decision for City College of San Francisco. To allow that to occur without the due process protections expected and delineated by Congress and the Department would be to invite another unlawful and catastrophic decision by an unreliable ACCJC.

### **1. A Plain Reading of 20 U.S.C. § 1099b and 34 C.F.R. § 602.25 Requires ACCJC to Provide City College – Any College – Full Due Process Rights**

An interpretation of the HEA and section 602.25, when applied to the denial of accreditation to a college on Restoration Status, is not difficult. The plain language of the HEA is that “**an agency ... shall establish and apply procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process ...**” 20 U.S.C. § 1099b(a)(6). Nothing could be clearer.

The procedures used in both the evaluation and “withdrawal proceedings” must “comply with due process.” Yet ACCJC has adopted a process which it admits was designed to apply to one college - City College of San Francisco - that excludes due process protections during the accrediting process.

The Department’s regulations are equally clear: the procedures used “throughout the accrediting process satisfy due process.” Restoration status and the loss of accreditation are part of the “accrediting process.” There is no provision making an exception for the accrediting procedures applied to CCSF, or to any college in Restoration Status.

As things stand, an accreditor that has previously displayed indifference to the due process rights of CCSF is now, by its own policy, entitled to immediately disaccredit CCSF in its total discretion, and bar the college from the notice, stay, review and appeal rights offered every other institution it accredits. Yet, an internal appeal process is mandated by § 602.25 for **any “adverse action.”** ACCJC’s policy utterly disregards the commands of both the HEA and the Department’s regulations that appeal right must be provided in the “**procedures it uses throughout the accrediting process.**”

Because ACCJC has adopted and may soon apply a seriously deficient withdrawal procedure, it is essential for the Department to step in and deny ACCJC’s continued recognition, and assist in locating another accreditor which can complete the evaluation of CCSF in a fair and objective manner.

### **2. ACCJC’s Defenses Are Without Merit**

ACCJC has already offered three explanations for why it affords CCSF no notice, stay, review or appeal rights. First, it claims that the Department already approved the full scope of its

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Restoration Status policy. Second, it claims that CCSF already received the process it is due. Third, it says that if CCSF fails Restoration, the College can just go to court. None of these defenses justify denying CCSF its appeal rights under the HEA and § 602.25.

#### **a. The Department Did Not Approve Denial of Due Process Rights**

The Department weighed in on the ACCJC's authority to modify its earlier decision to disaccredit CCSF in a letter to the Honorable Nancy Pelosi dated May 19, 2014. In that letter Lynn B. Mahaffie, the Senior Director, Policy Coordination, Development and Accreditation Services of ED wrote that,

“... the ACCJC has the authority to reconsider or rescind its termination decision so as to provide the institution with additional time to come into compliance within the two-year time frame, if such period has not run out, or to provide an extension for good cause. ... in general, an agency may, as permitted by its established policies and procedures, correct any error it has made, respond to an improvement in institutional performance, and adopt or change its policies with regard to its oversight of the institutions it accredits.” *Id.*

On June 11, 2014, ACCJC requested ED's views on the proposed Restoration Status policy. On June 20, 2014, Jamiene S. Studley, Deputy Undersecretary wrote to ACCJC stating that,

“Based on the available information regarding possible implementation, the Department considers the [Restoration Status] policy to be consistent with the provisions in the regulations at 34 C.F.R. § 602.20, and its possible application to CCSF not to be in violation of federal recognition criteria regarding enforcement of accreditation standards.” **(Exhibit 42)**

Neither ACCJC's inquiry to the ED, nor the ED's reply, dealt with any specific aspect of the Restoration Status policy other than § 602.20, the “two-year rule.” It is a fundamental rule of interpretation that neither a case nor an opinion letter can stand for propositions neither argued nor decided, so Undersecretary Studley's letter does not approve of the elimination of due process in ACCJC's Restoration Status policy.

There is no indication that the ED has ever decided whether the ACCJC's Restoration Status policy satisfies due process as provided in federal law. In view of the plain meaning of the federal statute, and the Department's regulations, we ask the ED to find the policy to be in violation of section 602.25.

#### **b. CCSF Did Not Waive Its Rights of Review and Appeal Under 34 C.F.R. § 602.25**

The due process rights afforded by the HEA and the federal regulations are critical to CCSF and any other college facing loss of accreditation, and their students, employees and local

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residents. Yet ACCJC has argued that its exclusion of due process from disaccreditation following Restoration Status is allowable because a college has only **one** right of appeal, and CCSF exercised that solitary right **in 2014** after it was ordered disaccredited, though disaccreditation had not been finalized, and Restoration Status did not then exist.

ACCJC has explained this preposterous argument ad nauseam:

“The institution will have already exercised its administrative remedies of Review of Commission Action and appeal prior to applying for restoration. Thus, if Restoration Status is not granted, or if the restoration period does not result in reaffirmation of accreditation, then the administrative remedies will be considered exhausted. The institution may then seek legal recourse without further administrative steps, if it feels there is a basis to do so.” (**Exhibit 40, p. 45**)

In July 2014, ACCJC’s Vice President Krista Johns claimed that:

“The restoration process does not remove any due process rights. It just doesn’t add any new ones. An institution applying for restoration status will have already exercised (or have chosen to not exercise) its review and appeal due process rights from the termination action. Application for restoration policy would not create another round of the same, as the same termination matter is still pending.” (Email, ACCJC Vice President Johns to Diana Scott, July 10, 2014; **Exhibit 43**).

ACCJC’s argument entirely ignores the agency’s obligation under 20 U.S.C. § 1099b and 34 C.F.R. § 602.25, that due process must be applied “throughout the accreditation process.” There is no need to add any “new ones,” because Congress and the ED have already identified the minimal due process rights that are afforded to withdrawal of accreditation throughout the accreditation process. A recognized accreditor is not permitted by federal law to deny review and appeal rights to an institution that is denied accreditation at the end of a restoration status period, when the accreditor evaluates the institutions compliance with standards over the two years of restoration and takes action based on activities the accreditor evaluates that occurred during this restoration period.

ACCJC’s explanation cannot supersede the absolute right of appeal “throughout the accreditation process” for adverse decisions, which is set forth in 20 U.S.C. §1099b, which requires, without exception, the right of appeal whenever an accreditor, after review, decides an institution should be disaccredited. Because the Restoration Status review covers an extended two-year period that was not previously reviewed by the ACCJC, or subject to a disaccreditation decision, the previous opportunity for review that CCSF exercised did not waive the right

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provided by section 1099b.<sup>16</sup>

**c. ACCJC's Evaluation of City College and Other Institutions in 2016-2017 is Based on its 2014 Standards, Which are Different Than Those Applied in 2012 and 2013**

ACCJC's argument that it excluded due process under section 602.25 from Restoration Status because *City College* already had its one chance at due process in 2013 is undermined by the fact that the Restoration Status evaluation concerns the agency's new 2014 standards and

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<sup>16</sup> In the CFT litigation, CFT *et al.*, contend that the prior right of appeal was invalid anyway, because ACCJC violated conflict of interest requirements in its appointment of the five appeals hearing panel members.

The ACCJC Hearing Panel consisted of five members: William "Bill" McGinnis, Joseph Richey, Margaret Tillery, Erlinda Martinez, and Thomas McFadden. As CFT and AFT 2121 explained in its December 15, 2014 Complaint about ACCJC, McGinnis is a trustee at Butte Community College District, which is accredited by the ACCJC. Mr. McGinnis has had a long and close relationship with the ACCJC, and particularly its chair, Dr. Barbara Beno. 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. Mr. McGinnis was beholden to Dr. Beno and the ACCJC for paid compensation in Spring 2012. 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](http://ccsf.granicus.com/MediaPlayer.php?view_id=2&clip_id=110))

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. Thus, both were called upon to evaluate the nature of the notice their Commission had given to CCSF in 2006.

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.

Panel member Thomas McFadden previously served as an ACCJC commissioner for two terms from 1999 to 2005. Until June 2013, he served as the "WASC Senior" Commission representative of the ACCJC. 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." At a minimum, such a comment by Mr. McFadden would appear to present a conflict of interest.

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eligibility requirements, not those applied to City College in 2011-2012, 2012-2013, and when it applied and qualified for Restoration Status. When City College was ordered disaccredited on July 3, 2013, that action was based on the College having deficiencies in regard to the 2002 Standards and Eligibility Requirements.

For more than 10 years ACCJC had evaluated institutions based on its 2002 Eligibility Requirements and Standards. Then in 2014 ACCJC adopted a new set of standards, which it calls its “2014 Eligibility Requirements” and “2014 Standards.” The newly-adopted 2014 Requirements and Standards differ significantly from the 2002 Requirements and Standards. ACCJC began to require colleges to meet the 2014 standards, and evaluate them for accreditation based on the new standards, beginning Spring 2015.

In a November 19, 2015 public presentation to community college leaders at the Community College League of California’s annual conference, ACCJC’s president Barbara Beno and chair Steven Kinsella, conducted a workshop on the new standards, in which they emphasized the differences between the 2014 and 2002 standards and requirements.

Although City College was granted Restoration Status based on the 2002 Standards and Requirements, ACCJC is now requiring that it satisfy the 2014 standards. The work the College has been doing has thus been geared toward the new standards.

The new standards are significantly different from the 2002 standards. The 2014 standards include 128 criteria or “sub-standards.” Of these, 13 are entirely new and 12 are an “expansion of the thought” contained in the 2002 predecessor sub-standard or standard. In other words, about 20% of the standards are, according to the ACCJC, substantially different than what was included in the 2002 standards. Besides that, ACCJC has rearranged, renumbered and rewritten virtually every standard and sub-standard. As a result, the self-study that City College is now preparing is geared towards the 2014 standards. ACCJC’s evaluation team, which is scheduled to visit City College in October 2016, will be evaluating the College’s compliance with the 2014 standards and requirements.

If any college is issued a disaccreditation sanction after the 2014 standards and requirements take effect, ACCJC’s policies make it apparent that the institution will be entitled to file an appeal, and to the other due process that ACCJC provides to satisfy section 602.25. That is, except for City College. This is because of ACCJC’s insistence that colleges on Restoration Status (i.e. only City College) are not given due process because they received due process when it was originally disaccredited. There is no reasonable justification for such a decision by ACCJC.

Under these circumstances, ACCJC would violate section 602.25 if it denied City College the full due process protections afforded by that section and Commission policies, to a college disaccredited at any stage of the accreditation process. Without question a 2013 appeal by City College, based on 2002 standards, could not be relied upon by ACCJC in 2017, to deny the

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College its right under the HEA and § 602.25, to dispute ACCJC’s judgment based on the 2014 standards.

If City College were to be denied “restoration” of its accredited status in January 2017, it undoubtedly would seek to appeal. An appeal would protect the educational rights of its students during the pendency of an appeal, and allow them some assurance that they could complete their educations while the College pursued an appeal. An appeal would also protect the job security of 2,500 employees. ACCJC’s attempt to eliminate City College’s due process rights under federal law further demonstrates why ACCJC is not a reliable federal accreditor.

**d. Restoration Status Unlawfully Denies City College, or Any Institution, an Opportunity to Apply For or Receive A Good Cause Extension under Section 602.20**

**34 C.F.R. § 602.18(c)** declares that to meet federal regulations an accrediting agency, “bases decisions regarding accreditation and preaccreditation on the agency’s **published** standards.” (Emphasis added)

ACCJC fails to adhere to this requirement, because it bases accreditation decisions – whether to provide institutions more than two years to come into compliance with Commission standards, for good cause – on unpublished “protocols.”

ACCJC has given some colleges more than two years to come into compliance with Commission standards and requirements, **for good cause**. While the option of an extension has been noted in ACCJC policies since about 2008, ACCJC has never published the grounds or procedures for obtaining an extension.

In December 2014, CFT filed a complaint with the Department and ACCJC, alleging that ACCJC did not publish its “good cause” requirements. The Department declined to become involved until ACCJC responded to the Complaint.

In February 2015, in response to the CFT’s December 2014 complaint, ACCJC acknowledged it had no written, published “good cause” policy for extensions of the two-year period, which specified the grounds for “good cause.” (See Letter, Johns to Bezemek, Feb. 27, 2015; **Exhibit 44**). However, in the same letter ACCJC announced that it had an **unpublished** “*protocol*,” which included four unpublished “rules” which govern the granting of good cause extensions by ACCJC. The circumstances calling for this extension are:

- (1) full resolution of the deficiency would reasonably take more than two years,
- (2) an extension to resolve a deficiency is necessary due to steps mandated by other “controlling agencies,”
- (3) the institution has retained “outside, credible third-parties or consultants with the authority or capacity to resolve deficiencies”

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(4) reasonable time is needed for an outside agency to resolve matters affecting the college's compliance.

ACCJC has defended its refusal to publish these rules on the grounds that the good cause extension is not to be "routinely granted," or "used as a mechanism to avoid initiating an adverse action." (**Exhibit 44, p. 13**)

ACCJC's "excuse" cannot overcome the explicit requirement of section 602.18(c), which requires that decisions be based on published standards.

Moreover, the regulation which creates the "two-year rule," 34 C.F.R. § 602.20, provides that if a college "does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance." **Nothing in the rule forbids a college publishing its "good cause" requirements.** Nor does anything in the regulation forbid an accreditor from permitting an institution from applying for a "good cause" extension.

Relying on a nonpublished, essentially secret policy, creates a disadvantage for institutions that may be unaware of the circumstances that might warrant a good cause extension. As a result, they may not bring the relevant circumstances to the accreditor's attention.

As attachment 6 of the CFT's December 2014 complaint (**Exhibit 45**) revealed, ACCJC had issued at least 20 good cause extensions between 2007 and 2014, yet there appears to be virtually no documentation, certainly no public documentation, that explains the ACCJC's justification for the extension. Secret decision-making increases the possibility of arbitrary and capricious decision-making, and is inconsistent with a recognized accreditor's obligations to the public.

Once again, ACCJC is also out-of-step with other accreditors, because other accreditors publicly disclose their good cause extension policies, and allow institutions to apply for such extensions. For example, the Northwest Commission recognizes the right of an institution to apply for a good cause extension in a **published policy**:

"Should an institution deem that as a result of mitigating circumstances it is not able to comply with the standard for accreditation or eligibility requirement within the specified period of time, the institution may submit a written request to the Commission for additional time to come into compliance ..." (See Northwest Commission on Colleges and Universities, "Commission Action Regarding Institutional Compliance Within Specified Period Policy."; **Exhibit 46**)

Other Commissions also **publish the grounds** under which an institution might be eligible for a good cause extension. Besides Northwest, the Southern Association of Colleges and

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Schools does so. (See SACS Policy Statement, “Sanctions, Denial of Reaffirmation, and Removal from Membership.”; **Exhibit 47**).

The Western Association of Schools and Colleges (WASC), Accrediting Commission for Senior Colleges and Universities, ACCJC’s sister agency, publishes its grounds for a good cause extension. (See Commission Meeting Guide, pp. 9-10; **Exhibit 48**).

City College of San Francisco, and any other college later placed on Restoration Status, do not appear to be considered eligible for a good cause extension, yet federal law plainly recognizes by allowing for such extensions, that circumstances might exist that would warrant a good cause extension. Any college placed on Restoration Status should, in the future, not be denied the opportunity to obtain a good cause extension, when the institution or accreditor could demonstrate it is appropriate.

In summary, ACCJC’s failure to publish the “protocol” provisions is inconsistent with ACCJC’s duty under Federal law.

Moreover, ACCJC’s argument ignores several crucial intervening factors:

- ACCJC’s upcoming review of CCSF in Fall of 2016 will be based on CCSF’s efforts to meet ACCJC’s standards during the period of October 15, 2014, when it applied for Restoration Status, through approximately October 15, 2016. In other words, the Restoration Status review means there will be an intensive evaluation of CCSF’s satisfaction of ACCJC standards for a period of almost two years following the previous ACCJC action to terminate CCSF.
- There is a reason the Congress enacted a law guaranteeing due process “throughout the accrediting process.” It could not foretell in advance the potential steps that the accrediting process might involve, but it expected, at a minimum that any adverse decision, wherever it occurred in the accrediting process, be accompanied by due process. The Congress could certainly imagine the substantial adverse impacts a disaccreditation decision would have and so it imbued the entire process with due process for any disaccreditation decision.
- In the case of CCSF, the harm that would result from a disaccreditation decision is catastrophic. Due process is intended to assure that correct decisions are made – they protect not just the immediate participants, but all impacted from significant decisions, from mistakes. It is incomprehensible that the Congress, or the Department, intended to eliminate due process from events occurring after a College has been placed on Restoration Status.

### **G. A Lawsuit Is No Substitute for an Appeal**

ACCJC has said that while CCSF would have no right to an internal review and appeal under Restoration Status, it could still file a lawsuit. A lawsuit does not satisfy due process under 20 U.S.C. § 1099b(a)(6) and 34 C.F.R. § 602.25, because it accepts that the accreditation has been terminated, its students, faculty, staff and prospective students left to fend for themselves. The HEA and § 602.25 call for pre-termination due process, that includes a hearing before hearing officers, who have no conflict of interest. The law states that upon written request the institution may have an, “opportunity ... to appeal any adverse action under this section, including denial, withdrawal, suspension, or termination of accreditation, taken against the institution or program, prior to such action becoming final at a hearing before an appeals panel.” 20 U.S.C. § 1099b(a)(6)(C).

In addition, § 602.25 provides that the appeals panel,

“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; and

(iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency’s option. In a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must identify specific issues that the original decision-making body must address. In a decision that is implemented by or remanded to the original decision-making body, that body must act in a manner consistent with the appeals panel’s decisions or instructions.”

It is evident that these are substantial rights, and a post-termination lawsuit cannot substitute, especially given the catastrophic harm that would immediately flow from disaccreditation, including closure of the institution and loss of educational opportunities for tens of thousands of students.

### **H. The Consequences of a Disaccreditation While on Restoration Status Are Catastrophic for CCSF, Its Students, Its Employees and the City of San Francisco**

With a disaccreditation deadline looming, CCSF had no choice but to apply for Restoration Status, which it did on October 15, 2014. ACCJC concluded that CCSF qualified for this status and granted CCSF Restoration Status on January 14, 2015. ACCJC is next scheduled to conduct a new evaluation of CCSF October 10-13, 2016, following CCSF’s submission of a self-evaluation. At the conclusion of the Restoration Status period, ACCJC is supposed to determine if CCSF is in compliance with the eligibility requirements, accreditation standards and ACCJC policies. If not, then “the termination implementation will be reactivated and the effective date

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will be immediate. There will be no further right to request a review or appeal ...” (**Exhibit 19**)

If ACCJC errs again and orders CCSF illegally disaccredited and closed, the educational catastrophe that was avoided by an injunction will come to pass. Fifty thousand or more students will be effectively expelled when CCSF’s doors close, with no place to go – other Bay Area community colleges, besides being geographically inaccessible, are running at full capacity. There is no question that CCSF’s academic and vocational programs are among the finest in California, and that the college is responsible for hundreds of millions of dollars of benefit to the local economy. Yet unless ACCJC is promptly removed as CCSF’s accreditor, ACCJC will be free to inflict this massive harm.

The Superior Court validated the harm that disaccreditation of CCSF would cause:

“There is no question ... of the harm that will be suffered if the Commission follows through and terminates accreditation ... These consequences would be catastrophic. Without accreditation the College would almost certainly close and about 80,000 students would either lose their educational opportunities or hope to transfer elsewhere; and for many of them, the transfer option is not realistic. The impact on the teachers, faculty, and the City would be incalculable, in both senses of this term: The impact cannot be calculated, and it will be extreme.” (Jan. 2, 2014 Memorandum Order Granting in Part and Denying in Part City Attorney’s Motion for a Preliminary Injunction at 13-14; **Exhibit 49**).

## **I. ACCJC is Incapable of Making a Fair, Objective and Unbiased Decision on CCSF**

ACCJC’s recognition has been under a cloud for some time. Given the significant role that supporters of CCSF have played in objection to ACCJC’s continued recognition, Complainants have serious concerns about ACCJC’s ability to act in an unbiased, fair and objective manner on CCSF’s accreditation status.

ACCJC’s performance of accreditation reviews of CCSF, from 2012 onward, has been accompanied by persistent misstatements and inconsistencies which raise substantial questions about ACCJC’s reliability and capability to conduct accreditation reviews.

**1. ACCJC has persistently misrepresented, defended and perpetuated a false version of CCSF’s accreditation history.** In 2006 ACCJC conducted a full evaluation review of CCSF and reaccredited the College for seven years. But in 2012, ACCJC asserted that CCSF had been deficient in meeting the ACCJC’s standards in 2006, and through 2012. ACCJC used this “history” to justify a “show cause” sanction in 2012, giving CCSF just 9 and ½ months to correct its “deficiencies”, and then issuing disaccreditation in 2013. (See Letter to Pamela Fisher from Beno, July 2, 2012; and letter to Thelma Scott-Skillman, July 3, 2013; **Exhibit 50**; **Exhibit 51**). In 2013, ACCJC relied on this “history” of noncompliance to justify its disaccreditation decision.

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Besides describing this supposed history in team evaluation reports and action letters, ACCJC made similar statements about CCSF in a May 27, 2014 public notice that it posted on its website, on the subject of the “Withdrawal of the Accreditation of City College of San Francisco.”<sup>17</sup>

- **ACCJC claimed** it “withdrew CCSF’s accreditation based on significant, long-standing problems that were documented ... CCSF had been aware of serious violations for nearly a decade with many opportunities to address them. The problems were brought to CCSF’s attention during a 2006 ACCJC peer-led team visit and agency review ...” (ACCJC withdrawal notice of May 27, 2014, pp. 1-2, emphasis added; **Exhibit 52**)

ACCJC also relied on CCSF’s supposed long history of not meeting standards when it announced the Restoration Status lifeline to the public in June 2014. Indeed, its notice emphasized what a miscreant CCSF was, and justified its unprecedented disaccreditation of a superlative college,

“... the [ACCJC disaccreditation] **decision was made due to years of inaction by CCSF to address serious deficiencies** identified through peer reviews and acknowledged by the college. These deficiencies, spreading across almost all areas of the Accreditation Standards, severely impacted academic quality and the operational sustainability of the college.” (**Exhibit 19**, emphasis added).

Both the People, the CFT and AFT disputed ACCJC’s version of the facts. And on February 17, 2015, the Superior Court found against ACCJC on this point and ruled that it had not identified deficiencies at CCSF in 2006, or in the years leading to 2012:

“Beginning in 2006 the Commission raised various concerns regarding City College’s future ability to comply with accreditation standards. **But the Commission did not at that time, or at any time between 2006 and 2012, find that City College failed to meet any accreditation requirement.**” (**Exhibit 27, p. 48**, emphasis added)

This judicial finding against ACCJC should have at least caused ACCJC to correct its record of misstatements. But it did not. ACCJC continues to make publicly available on its website - even highlight - this false history of its actions towards CCSF, a false history it has used to cause real harm to CCSF.

**2. ACCJC’s misstatements have not been limited to the evaluation in 2006.** For instance, in its withdrawal notice of May 27, 2014, ACCJC had this to say:

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<sup>17</sup> See: [http://www.accjc.org/wp-content/uploads/2014/05/ACCJC\\_Public\\_Statement\\_on\\_CCSF\\_Termination\\_Action\\_05\\_27\\_2014.pdf](http://www.accjc.org/wp-content/uploads/2014/05/ACCJC_Public_Statement_on_CCSF_Termination_Action_05_27_2014.pdf)

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“CCSF had no plans to pay for future liabilities, like post-employment medical benefits ...” (**Exhibit 52, p. 4**)

In fact, CCSF had a plan to fund OPEB – it followed the pay-as-you-go system that other colleges followed, and which the State approved, and it contributed some pre-funding as provided for in its retiree health benefit plan. The same system followed by UC and CSU.

### **3. Irregularities in the 2013 ACCJC evaluation of CCSF, and ACCJC’s misrepresentation of those irregularities.**

ACCJC’s website contains this statement that it really did nothing wrong to CCSF in 2013:

Judge Karnow essentially found that the ACCJC did not do anything wrong with respect to its decisions regarding the accreditation of CCSF.<sup>18</sup> (ACCJC Statement on J. Karnow’s Tentative Decision; **Exhibit 53**.)

Actually, the Court found that ACCJC had committed material violations of federal law:

“With respect to the 2013 termination decision, the People have proven that (1) the evaluation team had too few academics; (2) numerous Commissioners were selected pursuant to a policy that inadequately guarded against the appearance of conflicts of interest; (3) ACCJC did not provide a detailed written report that clearly identified all deficiencies in City College’s compliance with accreditation standards; and (4) ACCJC did not provide sufficient opportunity for a written response to deficiencies identified by the Commission in 2013 but not by the 2013 Evaluation team.” (**Exhibit 27, p. 70**)

The court found these actions violated 34 C.F.R. §§ 602.15(a)(3), 602.15(a)(6), 602.18(e), and 602.25(d). So, once again, ACCJC is not only not taking action to correct a false impression of CCSF, but continuing to propagate that false impression despite a court having explicitly ruled that ACCJC’s statements of fact were false.

**4. ACCJC’s misstatements included comments about ACCJC procedures.** For example, on April 13, 2014, ACCJC suggested that a solution for CCSF, which was facing disaccreditation, was for CCSF to voluntarily surrender its accreditation, and then apply for “candidacy status.”<sup>19</sup>

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<sup>18</sup> See: [http://www.accjc.org/wp-content/uploads/2015/01/01\\_16\\_2015\\_Press\\_Statement\\_Tentative\\_Decision\\_in\\_City\\_Attorney\\_Case\\_Announced.pdf](http://www.accjc.org/wp-content/uploads/2015/01/01_16_2015_Press_Statement_Tentative_Decision_in_City_Attorney_Case_Announced.pdf)

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However, this was no cure. If CCSF had accepted disaccreditation and applied for “candidacy status,” it would have had to wait two years before it would be eligible to rejoin the ACCJC. By then the College would have been closed, its academic and vocational programs irrevocably destroyed.

#### **V. ACCJC’s Lack of Fiscal and Administrative Capability (34 C.F.R. § 602.15(a))**

Federal law requires that a recognized accreditor have sufficient fiscal and administrative capability to conduct its accrediting functions. (34 C.F.R. § 602.15(a)). There is ample evidence that ACCJC lacks this capability. The information set forth above confirms ACCJC’s lack of capability. Beyond that there are numerous other examples, from ACCJC’s persistent failure to appoint evaluation teams with sufficient academics, to its disregard of internal ACCJC rules and federal requirements that prohibit an accreditor’s commission from increasing the number of deficiencies identified by a visiting team, without adequate notice and a real chance to respond before an action is taken.

Evidence of the ACCJC’s lack of capability to satisfactorily perform its accrediting function is evident from these examples:

1. Judge Karnow concluded that ACCJC increased the deficiencies of City College from 19 to 30 in 2013,<sup>20</sup> without notice to City College. The ACCJC policy specifically called for ACCJC to then stop its meeting, give notice to the affected college, reconvene after the college had an opportunity to respond, and the Commission expressly tasked the ACCJC president, Dr. Beno, with the responsibility to assure this due process was provided.<sup>21</sup> She and the Commission disregarded their duties, as noted by the Court. **(Exhibit 27, p. 50-51)**

The Court explained,

“The People’s approach finds strong support in ACCJC’s Policy on Commission Good Practice and Relations with Member Institutions. Ex. 36 at 43-45. There, the ‘Commission makes the commitment to follow good practices in its relations with institutions it accredits.’ *Id.* at 43. The

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<sup>19</sup> See [http://www.accjc.org/wp-content/uploads/2014/04/04\\_13\\_2014\\_The\\_Way\\_Forward\\_for\\_City\\_College.pdf](http://www.accjc.org/wp-content/uploads/2014/04/04_13_2014_The_Way_Forward_for_City_College.pdf); **(Exhibit 54)**

<sup>20</sup> The court described the increase at 10; the CFT complaint has frequently cited an increase of 11. We continue to use the higher figure pending discovery and trial in the CFT case. The distinction makes no difference to the analysis – an unlawful increase of 10 is as significant as an unlawful increase of 11 deficiencies.

<sup>21</sup> See ACCJC Policy entitled, “Policy on Commission Good Practice in Relations with Member Institutions,” 2012 edition of the Accreditation Reference Handbook, **(Exhibit 55)**.

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Commission states that it ‘will fulfill its commitment by adhering to’ a list of practices. *Id.*

If the Commission’s action lists any deficiency, which was not noted in the Team Report, before making any decision that includes a sanction, denying or terminating accreditation, or candidacy, the Commission, through its President, will afford the institution additional time to respond in writing to the perceived deficiency before finalizing its action at the next Commission meeting.” *Id.*

The Commission did not comply with its policies. **(Exhibit 27, pp. 50-51)**

2. The ED’s regulations are especially concerned that accreditors maintain a high level of transparency with the public, which includes of course the institutions it accredits and their constituencies. In order to ensure consistency in decision-making, the ED requires a recognized accreditor, as specified in 34 C.F.R. section 602.18(c) to “base decisions regarding accreditation and preaccreditation on the agency’s published standards.” As part of an accreditor’s operational policies, and consistent with the goal of transparency, ACCJC is also mandated by section 602.23(a)(2) to “maintain and make available to the public written materials describing – ... (3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants.” Together these two regulations create a comprehensive and easily understood goal of transparency in the decision-making process of a recognized accreditor.

ACCJC continues to fail to satisfy these requirements. A good example of this is ACCJC’s failure to make public written materials regarding “good cause” extensions.

ACCJC has had a policy allowing for good cause extensions since approximately 2007. The Department regulations have authorized good cause extensions since at least 2007.

From 2007 to 2014, ACCJC gave good cause extensions to at least 15 California community colleges. Some were given extensions on more than one occasion, many appear to be retroactive, and at least one was given an extension as to specified standards for more than a decade. (See CFT’s December 15, 2014 Complaint to ACCJC and the Department; **Exhibit 56.**)

In its December 15, 2014 complaint CFT alleged that ACCJC did not have a written policy made available to the public that governed good cause extensions and should have indicated the grounds and process. In a reply dated February 27, 2015, ACCJC admitted this to be the case, justifying its failure to make its policy publicly available on grounds that “the Commission does not routinely grant good cause extensions, and the extension is not used as a mechanism to avoid instituting an adverse action.” **(Exhibit 44, p. 13)**

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It is obvious that the ACCJC's policy for granting a "good cause" extension for institutions to have more than two years to come into compliance with standards falls within 602.23(a)(3). It is equally apparent that ACCJC is not immunized from 602.23(a)(3) by the two reasons it has advanced, or any reasons. In failing to publish its "good cause" extension policy ACCJC violates both 602.23(a)(3) and 602.18(c).

3. ACCJC publicly misstated the February 17, 2015, Superior Court ruling, declaring for instance that Judge Karnow "essentially found" that ACCJC "did not do anything wrong with respect to its decisions regarding the accreditation of CCSF," when the Judge found material violations that adversely affected City College. The Court actually ruled,

**"ACCJC's material violations** made it impossible for City College to have a fair hearing prior to the 2013 termination decision. **The material violations** can only be remedied with an injunction allowing City College to have the due process to which it was entitled in 2013." (**Exhibit 27, p. 72**, emphasis added).

4. ACCJC insisted that its Restoration Status process should exclude due process, thereby violating section 602.25. As we explained above, ACCJC is not entitled by federal regulations to adopt and exclude from Restoration Status the fundamental due process required by § 602.25.

5. ACCJC persistently mischaracterized its 2006 decision fully reaccrediting City College. ACCJC falsely claimed that City College had deficiencies in 2006, when it did not. In its February 17, 2015, ruling in the People's case, the Superior Court found that, "*Beginning in 2006 the Commission raised various concerns regarding City College's future ability to comply with accreditation standards. But the Commission did not at that time, or at any time between 2006 and 2012, find that City College failed to meet any accreditation requirement.*"

The Commission subsequently posted on its website, sometime after March 27, 2015, a Question/Answer memo that contradicted the above-quoted finding of the Court. This Q/A memo was aimed at the public and interested persons. It remains posted to this day, and is attached as **Exhibit 57**. In it ACCJC flatly contradicts the Court's ruling so as to cause people to believe ACCJC had found City College to be deficient in 2006:

"Just as with the 1988 example described in the previous answer above, the term "recommendation" [in 2006] was used by ACCJC to provide notice to the college of its deficiencies and noncompliance."

6. ACCJC asserted in 2013, that City College had "no plans to pay for future liabilities, like post-employment medical benefits," when it had a plan, one accepted by the State: pay-as-you-go funding and it contributed some pre-funding as provided for in its retiree health benefit plan.

7. ACCJC appointed an appeal panel for City College's 2013 appeal, that was riven with conflicts of interest.

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8. ACCJC had an enormous fiscal deficit for 2013-2014 of \$1,590,601, or 51.6% of its revenue.

9. In Spring 2014, the San Francisco Superior Court had enjoined the finalization of City College of San Francisco's disaccreditation, which was then scheduled for July 31, 2014. However, both the People's and CFT's lawsuits were proceeding, and the College was pursuing an appeal of the disaccreditation before the ACCJC's appointed hearing panel. At that moment in time, the leaders of the Commission encouraged City College to discontinue its appeal, and to instead apply for "candidacy," which ACCJC's chair and vice chair assured would allow City College to continue operating with no adverse consequences for its students. But what these ACCJC leaders had offered was nothing less than a Trojan horse, a pathway to the destruction of City College and a disastrous end to the education of more than 50,000 students. They and their paid staff should have known better – that they did not provides additional reasons for denying ACCJC's continued recognition. What follows is the story of that episode, which demonstrates the malevolence or incompetence of the ACCJC.

On April 12, 2014, ACCJC chair Sherrill Amador and vice-chair Steven Kinsella published an opinion article in the San Francisco *Chronicle* in which they wrote, "As the clock ticks toward a July 31 deadline, there is a call to give more time to City College ... to make the changes necessary to prevent the loss of accreditation." Declaring that it was not the clock but the College's "flawed structure as well as federal law," "there is a path forward that will protect students ... and the San Francisco community served by the college."

Amador and Kinsella then misstated federal law, "Congress and the U.S. Department of Education require an accrediting body to allow a substandard college no more than two years to come into compliance or lose accreditation." The Commissioners ignored that they had given the college just 9 and 1/2 months and that the Commission had the authority to give a good cause extension, something it had done in 20 previous cases. (See Exhibit 45). In saying this, they misled the public.

They went on to claim that "The solution for City College is clear: candidacy leading to reaccreditation, while administrators, faculty, and staff work together to address remaining deficiencies." They wrote that "a candidate college is eligible for federal financial aid and state funding, the students' course credits are generally transferrable ...". They added that students degrees or certificates would be recognized as long as the college eventually obtained accreditation.

As a recognized accreditor how could they have gotten this so wrong. Because ACCJC's solution was at worst a big lie, and at best gross malfeasance. It was, undeniably, another Trojan horse. An April 21, 2014 article in the San Francisco *Chronicle* destroyed every claim by Amador and Kinsella. Paul Feist, a spokesperson for Chancellor Brice Harris of the Community

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Colleges, explained that “a college under candidacy cannot receive state funding.”<sup>22</sup> Degrees would be valid only if issued after the college regained accreditation status. And federal funding was not available, citing an unnamed ED source. When Amador was contacted, she began walking back her article – asserting that state funding while on accreditation would require legislation, and disclaiming, through a spokesperson, any knowledge of what the legislature would do.<sup>23</sup>

Reichman’s *Academe Magazine* Blog of the AAUP then cited others who had lost confidence in ACCJC, citing a letter Helen Benjamin wrote to ACCJC on April 25, 2014, on behalf of the Chief Executive Officers of the California Community Colleges. Benjamin’s letter expressed grave concern for City College and for ACCJC, and questioned ACCJC’s failure to afford City College adequate time, which was within its power, to meet Commission requirements.<sup>24</sup> She wrote, “As representative of a majority of ACCJC’s member institutions, we believe there is more than ample cause for ACCJC to extend the period for achieving compliance for the benefit of both the students and the community served by CCSF, **as well as for all ACCJC member institutions.**” (Emphasis added)

Benjamin’s letter noted that after the recession that led to \$1.2 billion in funding cuts over several years, “there is no manner by which CCSF can redirect the more than 70,000 remaining students to other higher education options in the Bay Area. California’s community colleges continue to be deeply impacted ...”

In other words, the solution presented by ACCJC’s leaders was more than a trap, it was a preposterous suggestion by “leaders” who should have known better, once again betraying ACCJC’s lack of administrative capability to fulfill its accreditation functions.

The above are merely a fraction of ACCJC’s many unlawful and unfair acts which demonstrate that ACCJC lacks the administrative or financial capability to be recognized by the Secretary.

The Department’s 2012 Guidelines for Accreditation indicate that section 602.15(a)(1) means that a recognized accrediting agency,

“... must be able to demonstrate its administrative and fiscal capability to carry out its accreditation activities across its requested scope of recognition. More specifically, this includes having adequate

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<sup>22</sup> “The Latest on the CCSF Accreditation Controversy,” Hank Reichman, May 8, 2014, the *Academe Magazine* Blog. Feist cited the California law. **(Exhibit 58)**

<sup>23</sup> See San Francisco *Chronicle*, April 21, 2014, updated April 22, 2014 – “Errors seen in commissioners’ opinion piece on CCSF funding.” **(Exhibit 59)**

<sup>24</sup> See letter, Benjamin to ACCJC, April 25, 2014. **(Exhibit 60)**

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administrative and recordkeeping systems, individuals on all evaluation, policy – and decision-making bodies that are qualified and trained (by the agency), and administrative staff and financial resources to **consistently conduct its business in accordance with its policies and procedures.”**  
**(Exhibit 22, p. 17)**

ACCJC demonstrates that it lacks adequate administrative capability when it engages in the conduct described above, and when its decision-making body and administrative staff do not consistently conduct its business in accordance with its policies and procedures.

ACCJC’s actions, as explained by the Court in its decision, evidence an accreditor that lacks the administrative capability to carry out its accrediting activities across the scope of its recognition.

The failure of Dr. Beno to exercise her responsibility and stop the Commission from taking action on 10 “new” deficiencies for City College in 2013 demonstrates the Commission lacks the administrative capability to comply with its own regulations. The Commission’s failure to recognize that it was prohibited from taking action to disaccredit City College at its June 2013 meeting based on the 10 new deficiencies also demonstrates that the training and quality control for the Commission is inadequate.

The Commission’s failure to assure that its public statements on the outcome of the People’s trial are accurate demonstrates that there is ineffective control over the agency’s accreditation activities.

Evidence that the Commission lacks adequate administrative capability is evident from its suggestion CCSF surrender its accreditation and apply for candidacy, its failure to appoint sufficient academics to teams, its creation of a CCSF appeals hearing panel that had actual or apparent conflicts of interest, and its persistent misstatement of City College’s re-accreditation in 2006, without deficiencies. Dr. Beno’s failed effort to persuade the Superior Court that a deficiency is not a failure to meet a standard, but is the “facts on the ground,” illustrates ACCJC’s lack of administrative capability. ACCJC made this effort despite having defined deficiency as a failure to meet the standards for decades.

And ACCJC continues to prove the point. Recently, ACCJC Vice President Krista Johns indicated that ACCJC’s Commission has frequently increased the deficiencies cited by evaluation teams, yet ACCJC offered NACIQI no proof that any colleges were notified of these increases and given an opportunity to respond. (See testimony of Johns at the Dec. 17, 2015, NACIQI meeting transcript, pp. 39-40; **Exhibit 61**)

In summary, ACCJC’s continued inability to assign sufficient academics to teams, to adopt a compliant definition of academics, and its repeated missteps as summarized above, confirm that ACCJC lacks the financial and administrative capability demanded of a recognized accreditor.

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## **VI. ACCJC Has an Actual or Apparent Conflict of Interest and Should Not Be Allowed to Evaluate CCSF**

ACCJC is under a cloud. Hundreds of people and organizations, CEOs, the California legislature, the California Bureau of State Audits, the Board of Governors of the California Community Colleges, several Task Forces of the Board, Academic Senate, and others groups and individuals have submitted comments or complaints to the ED and/or NACIQI questioning ACCJC's continued recognition.

ACCJC should not be making an accreditation decision on CCSF, or any other college that has opposed ACCJC's actions, or whose constituents have opposed ACCJC's actions. Under the circumstances, ACCJC cannot be relied upon to act fairly and objectively when, as we have shown, ACCJC continues to misrepresent the condition of CCSF, and ignores the rulings of the Superior Court, which are final and binding on it.

There are additional reasons:

- Over the past seven months, with the implementation of new and largely untested standards, no college that has undergone a full ACCJC evaluation review has been given a 6-year re-accreditation. Instead, ACCJC has issued a new 18-month extension, demanding that colleges correct multiple "deficiencies," and be reviewed anew. *Not a single college evaluated under the new standards has been found to be without deficiencies.* Yet, the 'Restoration Status' CCSF is currently under requires a higher standard than any of these colleges.
- ACCJC has also created new procedures to judge colleges' fiscal capacity, but refuses to share the methodology for its reviews, despite federal law requiring all procedures to be made known to the colleges being evaluated. See 34 C.F.R. § 602.18(a).

ACCJC is undergoing review by the ED based primarily on complaints arising from its actions towards CCSF. And while ACCJC's own recognition hangs in the balance, ACCJC is evaluating CCSF and other California community colleges. There is no way this meets the basic tenets of due process to allow ACCJC to review these same colleges.

ACCJC should be immediately removed from evaluating CCSF, and a neutral, objective evaluator appointed in its place.

## **VII. Conclusion**

ACCJC has disregarded its obligations as a recognized accreditor for years and no number of complaints or third party comments, or ED citations, have made so much as a dent in its arrogant and dismissive attitude. As a consequence, the education of more than 2 million California community college students is at risk.

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ACCJC is about to evaluate a college whose rights it violated when the college was evaluated in 2012 and 2013. It was only the issuance of an injunction and an order that the ACCJC had to comply with its own rules and provide notice to the College of alleged deficiencies, which temporarily saved it.

Now ACCJC has created a Restoration Status evaluation system that will deny CCSF any internal appeal rights and the potential to make another disaccreditation decision instantly effective, thus posing the greatest threat to the education of California community college students since the colleges were created. And ACCJC is doing this in utter disregard of federal law and the Secretary's regulations. ACCJC continues to harm all California community colleges with unreasonable and excessive demands and a lack of transparency – all of this now widely known. ACCJC has no credibility. It is not widely accepted; on the contrary, it is widely scorned by educators and by the general public.

ACCJC itself is facing an upcoming decision by the Secretary on its continuing recognition. The challenges to ACCJC's continued recognition address numerous issues, including the fact that ACCJC is not widely accepted as is required by 34 C.F.R. § 602.13. Given the prominent role that faculty, staff, students, and organizations at CCSF have played in challenging ACCJC's continued recognition, and ACCJC's unfavorable response to those efforts, ample evidence supports the Department concluding that ACCJC is incapable of an unbiased decision on CCSF's continued recognition. For this reason alone, ACCJC should be recused from any further review of CCSF.

CFT and AFT are asking the ED to use the authority Congress bestowed upon the Secretary to act now, for all these reasons, to avoid the catastrophic consequences that hang over City College of San Francisco, but ultimately threaten the public interest and tens of thousands of anxious college students.

Mr. Secretary, we respectfully request you remove ACCJC from any role in CCSF's accreditation and act now to replace ACCJC with a widely accepted accreditor.

Respectfully submitted,

Dated: August 8, 2016

By: /s/ Robert J. Bezemek  
Robert J. Bezemek  
Counsel for California Complainants

By: /s/ David Strom  
David Strom  
Counsel for AFT Complainants

Cc: Undersecretary Ted Mitchell