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June 4, 2013

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

**Re: Complaint Against the Accrediting Commission of Community and Junior Colleges for Not Responding to a Complaint as Required by 34 CFR § 602.23(c)**

Dear Director Gilcher:

We write on behalf of the California Federation of Teachers, AFT/AFL-CIO, AFT Local 2121, and various current and past officers of the CFT. This constitutes a Complaint filed with the Department of Education in connection with the failure of the Accrediting Commission for Community and Junior Colleges (ACCJC) to investigate and respond to a complaint filed with it, in the manner required by 34 CFR section 602.23(c).

On April 30, 2012 the California Federation of Teachers, AFT, AFL-CIO, AFT Local 2121, and nine present and past officers of CFT, AFT Local 2121 and the CFT's Community College Council filed two copies of a Complaint and Third Party Comment, and supporting attachments, with the ACCJC. (the "April 30<sup>th</sup> Complaint") A copy was also submitted to the US Department of Education, along with the supporting evidence. The April 30<sup>th</sup> Complaint raises serious issues about the ACCJC's compliance with its policies and law, the impartiality and integrity of the Commission, and its reliability for Federal accreditation purposes. This<sup>h</sup> Complaint was directed not only at ACCJC's assessment of City College of San Francisco, but also its treatment of all California community colleges.

ACCJC responded to the April 30<sup>th</sup> Complaint with the attached 7-page long "Report" dated May 30, 2012. (**Attachment 1**) This Report is incomplete and lacks sufficient detail indicating that the ACCJC conducted a fair, equitable and unbiased investigation and processing of the April 30<sup>th</sup> Complaint, as required by 34 CFR section 602.23(c). To the contrary, the perfunctory response declares that most of the allegations are not being addressed, and not a scintilla of documentary evidence was attached or referenced to support the ACCJC's assertion that it actually reviewed and investigated the allegations.

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**I. A Perfunctory, Incomplete, Untimely and Biased Report by ACCJC**

When ACCJC announced on May 30, 2013 that it had conducted its own investigation of the Complaint against it, Complainants had no reason to expect anything besides a rejection given the nature and scope of the allegations documented in the Complaint. Still, ACCJC's response is particularly contemptuous of its legal obligations. Federal law demands that the Commission "review in a timely, fair and equitable manner, and apply unbiased judgment, to any complaints against itself ..." 34 CFR § 602.23(c) ACCJC violates each of these standards.

**Not an Unbiased Review.** First, the review is especially biased, even for an organization that is investigating itself. ACCJC's Report notes that a complaint against the Commission "is ordinarily considered by the ACCJC's President", but because the Complaint "makes allegations about the President" it had "appointed the members of the Executive Committee ... to consider the issues contained in the Complaint and prepare this report." This Committee includes Commissioners who, like the President, are the subject of Complainants' accusations.

**No one signed the Report,** but we assume the "Executive Committee" declared to be responsible for the Report consists of those individuals serving in the positions identified as the Executive Committee in the ACCJC's Bylaws. (**Attachment 2**) The Commission's failure to have its Executive Committee actually sign the Report, or signify the identity of those who purportedly issued it, seems to conflict with the Federal requirement of a fair review by, for instance, not allowing us to fully examine the conflicts which may exist for signatories.

According to the Commission's Bylaws, its Chair (Sherrill Amador) serves as **chair of the Executive Committee**,<sup>1</sup> and the other members of the Executive Committee are apparently its **Vice-Chair Steven Kinsella**,<sup>2</sup> the **Chair of the Budget and Personnel Committee (who is believed to be Frank Gornick)**,<sup>3</sup> and apparently the former ACCJC Chair Michael Rota.<sup>4</sup> The

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<sup>1</sup> See Bylaws, Art. VII, Section 2, Article VIII (**Attachment 2**)

<sup>2</sup> *Id.* See ACCJC Newsletter dated Spring 2013, p. 2, attached as **Attachment 3**.

<sup>3</sup> *Id.* See attached Agenda from the ACCJC's Meeting of January 9, 2013, suggesting Mr. Gornick's service as Chair of the Budget and Personnel Committee. (**Attachment 4**) We are unable to locate any other evidence of the chair of ACCJC Budget and Personnel Committee.

<sup>4</sup> See Bylaws, Art. VIII (**Attachment 2**) We were unable to locate any documents identifying the "former" chair serving on the Executive Committee, but assume it is Mr. Rota.

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Executive Committee serves as “council to the president” and presumably was directly involved in approving many of the policies and actions which are the subject of the April 30, 2013 Complaint to ACCJC. Once the identity of the signatories is confirmed, we may find it appropriate to amend this Complaint.

Mr. Kinsella and Mr. Gornick are alleged in the April 30<sup>th</sup> Complaint to have disqualifying conflicts of interest in regard to the Commission’s reliance on GASB 45 and OPEB prefunding as an assessment criteria. Both are alleged to have served at various times as board members of a Retiree Health Benefits Joint Powers Authority “trust.” This trust collected prefunded contributions from some community colleges which were accredited by ACCJC. At times Mr. Kinsella or Mr. Gornick served as chairs or members of ACCJC evaluation teams which reviewed colleges to evaluate their prefunding of estimated OPEB liabilities. Evidence of their activities involving allegedly conflicting dual roles (e.g. evaluation team member or chair, ACCJC Commissioner or task force member, and JPA founder, board member, etc.) is set forth in the April 30<sup>th</sup> Complaint. (See pp. 124 - 167)

Further, as mentioned, Mr. Rota and Ms. Amador served as Commission Chair when many of the actions challenged in the Complaint occurred. In view of the above, one can scarcely imagine any ACCJC “group” more biased to “investigate” the accusations contained in the April 30<sup>th</sup> Complaint than the Executive Committee.

Then there is the baffling claim by the Commission that it appointed the Executive Committee rather than President Beno, to “consider the issues,” because there were allegations against the President, clearly implying that the President was *recused* from participation in the preparation and determinations in the Report. Yet when one clicks on the link to the Report on the ACCJC’s press release announcing the Report, what comes up is a copy of the Report which is labeled at the top of the first page as being “**drafted by BB**”, which suggests Barbara Beno:

**Complaint analysis drafted by BB** (00069195).DOC -  
Report\_on\_CFT\_Complaint\_05\_30\_2013.PDF (**Attachment 1**, hereto, emphasis added)

A copy of the Commission’s internet version of the Report is attached as **Attachment 5**. The BB designation appears more than once. The only member of the Commission or its staff known to have the initials BB is the supposedly-recused Barbara Beno.

If an “analysis draft” by Ms. Beno was converted into the Executive Committee’s Report, a logical deduction, then it is natural to question the credibility of the assertion on page one of the Report that she was recused, and to further doubt the integrity of those claiming responsibility for

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the Report. Of course the April 30<sup>th</sup> Complaint already presents serious questions of Commission integrity through allegations of a Commission rife with serious conflicts of interest. These conflicts are, as is evident from the Complaint, plainly visible in the public record of ACCJC activities. The “complaint analysis drafted by BB” notation thus suggests that the Commission allowed Ms. Beno to analyze and decide whether conflicts of interests involving herself were valid or not. Such action would hardly satisfy the Federal regulation.

ACCJC should be required to address this issue, along with responding to the April 30<sup>th</sup> Complaint in a fair, equitable and complete manner.

**An untimely response.** As to the numerous allegations perfunctorily dismissed without discussion, or even acknowledgment, the Reply is untimely.

We next discuss the fact that the Reply fails to address most of the allegations of the April 30<sup>th</sup> Complaint, and is inadequate as to what it does address.

## **II. An Unfair and Inadequate Review**

The Commission’s review of the Complaint is supposed to be fair and equitable. It fails these requirements. The ACCJC Complaint Policy plainly implies that the Commission will not only respond to a Complaint, but will **investigate** it. The ACCJC Policy on Complaints provides that the “President ... responds to each complaint ... within 30 days of receipt ... if more time ... is required **to complete an investigation**, the complainant is notified ...” In order to satisfy the Federal standard of fairness and equitability, an investigation of the Complaint’s accusations is essential. Yet the Report offers no indication whatsoever of any investigation. To the contrary, it makes reference to “reviewing the Complaint” and to “issues” that merit the Commission’s “attention and reflection.”

No details of any supposed investigation are delineated. Did the Executive Committee interview anyone in regard to the few allegations it bothered to consider? There is no indication. As to issues which involve specific documents, such as the inference that an “action recommendation” document was properly prepared, **no such documents** are attached, and as we show, more than one issue is misstated. In fact, as noted earlier, there is no evidence in the Report that any documents were reviewed or obtained by the Committee, or that any witnesses were questioned in regard to the April 30<sup>th</sup> Complaint.

Accordingly, the ACCJC’s response fails to comply with the Commission’s own Policy on Complaints, and with 34 CFR section 602.23(c).

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### **III. The Report Fails to Address Important Aspects of the Complaint/Comment and Wrongly Refuses to Treat it as a Third Party Comment, in Violation of its Policies and Federal Law**

The Report takes a perfunctorily dismissive approach to most of the Complaint and Comment.

First, it flat-out refuses to address the many serious allegations that the Commission violated and continues to violate fundamental Federal regulations in regard to ACCJC's evaluation of CCSF and generally all of the community colleges. ACCJC's excuse is that "this is not a court of law." This is no justification for failing to respond to the Complaint. The applicable Federal regulations set forth Standards which ACCJC has extensive experience with, and is required to satisfy. For it to claim that it is unable to indicate whether it complies with these Standards strongly indicates the Commission lacks the necessary reliability and integrity to serve as an accreditor charged by the Federal government with assessing these Standards.

ACCJC performs an important public function. It is paid nearly \$3 million annually by the People of the State of California for this function, and it is expected to fairly evaluate California community colleges in regard to their satisfaction of Standards of performance, and in compliance with Federal requirements. The ACCJC is not some ordinary, non-profit voluntary organization. Rather, it is named by the Community Colleges, in state law, as their accreditor. The Federal government has given ACCJC monopolistic Federal power to determine access by higher education institutions to Federal monies for students and colleges alike. The Federal government relies on ACCJC as a gate-keeper to Federal education funding. ACCJC thus wields decisive power over California's public community college system. It cannot just refuse to respond to and investigate accusations that it is violating the very laws (and hence Standards) it is required to follow and implement.

Second, the Commission dismisses accusations that some of its policies violate the law on the grounds that they are "developed in consultation with and periodically reviewed by ACCJC's legal counsel," and it has "no reason to believe [they] are not fully in accordance with all applicable legal requirements." Based on this generality, it did not address allegations that its policies, Standards and actions violate numerous Federal regulatory requirements. In other words, it just ignored these Standards. These include:

**\* It must have effective controls against conflicts of interest in the accreditation process - 34 CFR §602.15(a)(6).** Yet it has allowed conflicts which compromise the independence of evaluation teams, lobbying which opposes the interests of some community colleges, and its demand that colleges prefund GASB 45-identified OPEB contributions.

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**\* It adopts and applies standards which are “widely accepted” by other accrediting bodies and educators - 34 CFR § 602.13.** Yet its OPEB prefunding standard and harsh censorship of governing board members is not widely accepted.

**\* It must avoid the inconsistent application of its Standards - 34 CFR § 602.18(b).** We allege that in its treatment of reserves, grants, OPEB and compensation as a percent of budget, ACCJC has been inconsistent. We allege ACCJC respects State law when it fits with ACCJC’s ideology, but rejects State law when it does not.

**\* It must “clearly identify” any deficiencies in its reports - 34 CFR 602.18.** We allege it failed to do so in the case of CCSF.

**\* It must assure that the constituencies represented at a college have an opportunity to participate meaningfully in the evaluation of colleges - 34 CFR § 602.21(b)(4).** We allege ACCJC disproportionately includes administrators and disproportionately excludes faculty.

**\* It must assure that its Standards for “resources” are a fair measure of institutional strength and stability - 34 CFR § 602.19(b).** We allege this is not the case.

**\* It is required to be “separate and independent, both administratively and financially, of any related, associated or affiliated trade association” - 20 USC § 1099b(a)(3)(C).** We allege this is not the case.

**\* It is required to base its decisions on clear and published Standards which are set forth in written materials for the benefit of colleges, students and the public - 20 USC § 1099b(a)(6)(A)(i); 34 CFR § 602.18(a); 34 CFR § 602.20.** We allege ACCJC arbitrarily enforces underground, unpublished standards.

**\* It must maintain a systematic program of review that “demonstrates that its standards are adequate to evaluate the quality of education ... provided ... and ... relevant to the education and training needs of students - 34 CFR § 602.21(a).** We allege its assessments are diametrically opposed to objective measures of Student Success.

**\* It is required by Federal law to “consistently apply and enforce standards” which “respect the stated mission of the institution ...” - 20 USC § 1099b(a)(4)(A); 34 CFR § 602.18.** We allege it tried to legislative change the mission of California’s community colleges.

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**\* It is required to enforce standards that ensure that the education offered is of sufficient quality to “achieve its stated objective for the duration of any accreditation period ... granted by the agency” - 34 CFR § 602.18, 34 CFR § 602.18 (a),(b).** We allege it applies its “OPEB” and GASB 45 Standard to 30-year financial projections.

Relying on the undisclosed legal opinions of legal counsel for undisclosed policies is hardly a fair or equitable response, and proves nothing about the validity of ACCJC’s policies or Standards. The April 30<sup>th</sup> Complaint identified several ACCJC policies which are alleged to violate the regulations and Standards adopted by the Department of Education, Federal common law due process, and California common law fair procedure. Some of the issues raised include an absence of due process or fair procedure which prejudiced ACCJC’s assessment of CCSF, and apply more generally to all of its assessments. (See April 30<sup>th</sup> Complaint, especially at pages 107 - 124, 157 - 160, 193 - 208)

In failing to address these allegations, the ACCJC violates the Federal requirement that it respond to **every complaint**. The Higher Education Act of 1992 requires ACCJC to look not only at whether its policies are “adequate on paper.” It must do that too. But fundamentally it must also examine **whether its policies, as applied, and its actions, satisfy Federal requirements**. This obligation is totally ignored in the Report.

Third, ACCJC is wrong in rejecting outright the Third Party Comment on grounds it is not a legitimate Comment. The Report declares that a Comment is a process for persons with “concerns about an educational institution” to “express those concerns without going through the formalities of filing a complaint about the institution.” In other words, in ACCJC’s view, only comments which express *negative concerns* about a college will be accepted as Third Party Comments. This is at odds with the law. Federal law specifies that ACCJC “must provide an opportunity for third-party comment concerning the institutions ... qualifications for accreditation.” 34 CFR § 602.23(b). This is precisely what CFT’s Comment provides.

The Comment filed by CFT *et al.* explains why CCSF should be fully accredited, and why the Commission’s Show Cause sanction was unwarranted. The Comment also references objective statistics not mentioned by ACCJC which rank CCSF high in the accepted, objective measures of Student Success. It shows, *inter alia*, that CCSF’s estimated OPEB liabilities cannot be considered in assessing its fiscal stability, that CCSF satisfies State law in regard to reserves, that CCSF’s grants cannot be treated negatively because they are beneficial and comparable to other institutions. And it shows that CCSF conduct used by ACCJC to justify Show Cause, was inconsistently viewed as warranting accreditation or less sanctions in other reviews. In other words, the Comment identifies ACCJC’s errors and arbitrariness in assessing CCSF’s

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qualifications for accreditation, and discusses why CCSF is qualified for accreditation.

A Third Party Comment revealing that previous criticism of the institution by the ACCJC was improper, because it violated legal requirements, comes within this broad Federal standard. In refusing to also accept CFT's submission as a Third Party Comment, ACCJC deprives the its own Commission of relevant information supplied by CFT and AFT 2121, and thus violates both its own policy and 34 CFR 602.602.23(b).

Fourth, it is not "worth noting" by ACCJC that the comment was filed *solely* by members of the public, and their representative, and the representative of more than 2,000 CCSF employees, *as opposed to "CCSF" trustees or high-level administrators*. Denigrating the faculty's Complaint does not serve to justify rejection of the Complaint. These 2,000 faculty speak, through their representatives, with as much weight, if not more, than the interim CEO or CCSF's trustees. And the fear sown by ACCJC among administrators and trustees, which discourages colleges from sticking up for themselves, is well known in California, documented not only by CFT and Marty Hittelman, but in countless news articles, and the report of the non-partisan RP Group. The 2011 RP Group Report *Focusing Accreditation on Quality Improvement*, noted:

" [Colleges C and D] described the commission as not being receptive to constructive criticism and not encouraging feedback from the colleges and expressed concerns about retaliation." (p.76)

and,

"People are very fearful to give open, honest feedback for fear of retribution. There is a perception that if you go on record with criticism, that it could come back to haunt you. Very few campuses are going on the record with concerns." *Ibid*.

#### **IV. Specific "Findings" of the "Executive Committee"**

Even in the five aspects of the Complaint which it discusses, ACCJC fails to conduct a fair and equitable review.

##### **A. Mischaracterization of Suggestions to Improve as Deficiencies**

The Committee's Response to this part of the Complaint is infused with more mischaracterizations, downright errors and a failure to address a central thesis of the April 30<sup>th</sup> Complaint.

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The 2006 ACCJC action found that CCSF satisfied every Standard, not “sufficient numbers of standards.” The 2006 Report made suggestions to improve - it did not demand “corrective action.” But the July 20, 2012 action letter said “Show Cause” was ordered because the college “failed to implement the eight recommendations of the 2006 evaluation team ...”

Nowhere in the Report does it defend against a central thesis of the Complaint, that the Commission, without benefit of policy, has increasingly demanded that the failure to follow suggests constitutes a deficiency, and that in the case of CCSF the Commission expressly recharacterized CCSF as being deficient between 2006 and 2012, because it failed to implement suggestions to improve, which are not requirements.

The 2006 ACCJC action letter from Ms. Beno which reaffirmed accreditation, required that the college complete a “Progress Report” in 2007. The letter stated that the progress report should focus on “resolution” of three recommendations - #4 (financial planning and stability), #2 (planning and assessment), and #3 (student learning outcomes).

If this was meant to convey that the recommendations had to be followed, it violated ACCJC policy and Federal regulations requiring clarity, as alleged in the Complaint. In any event, CCSF apparently satisfied the ACCJC as there was no further mention of recommendations #2 until 2012, and #3 was not mentioned after 2009. As to #4, this is the OPEB/GASB 45 recommendation, which the April 30<sup>th</sup> Complaint alleges was an improper criteria.

The Report states that when the Commission accepted CCSF’s Progress Report *in 2007* it then “required” that CCSF submit a Focused Midterm Report in 2009 addressing progress toward all 8 of the 2006 recommendations. This is not accurate. A Midterm Report, as was mentioned in 2006, is required of all colleges whose accreditation is renewed:

“All colleges are required to file a Midterm Report in the third year after each comprehensive evaluation. Midterm Reports indicate progress toward meeting all of the evaluation team’s recommendations ... The Focused Midterm Report is a midterm report which must give evidence of progress on recommendations selected for emphasis by the Commission. City College ... should submit the Focused Midterm Report by March 15 2009.” (Beno to Day, June 29, 2006)

Furthermore, the evidence shows that the March 2012 visiting team discussed warning and probation during its visit, that the team chair apparently recommended probation, but that the Commission, contrary to its policy, did not obtain a signed team recommendation for action from the team, and that the Commission then imposed a Show Cause sanction. Except for a

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disingenuous response (discussed below) the Report does not discuss these allegations.

The assertion that many of the areas which were noted only as a “recommendations” in the 2006 Report” had “become serious deficiencies” in 2012 is belied by the evidence recited in the Complaint, and to the Commission’s reliance on improper criteria, arbitrary application of Standards, or lack of substantial evidence.

### **B. Conflict of Interest of Peter Crabtree**

The ACCJC Reply dismisses the allegation that a conflict of interest involving the relationship between ACCJC President Barbara Beno and her husband, CCSF evaluation team member Peter Crabtree, compromised the role of the visiting team as being, and appearing to be, independent of the Commission. ACCJC does this by ignoring the evidence, policies and law, and focusing on peripheral matters.

First, ACCJC argues that Mr. Crabtree was a proper selection for the CCSF review - but whether he possessed skills relevant to the visit is irrelevant to whether there was an actual or apparent conflict. The claimed reason for his appointment to the visiting team - his expertise in vocational education - is only relevant to whether there was an improper  *motive* in his assignment. As to this separate issue, since there are scores of faculty and administrators working or administering in the subject areas of career or vocational education in the California community colleges, ACCJC’s claim that his particular “expertise” motivated his assignment is questionable on its face. Note that no details were provided about the Commission’s selection of reviewers with vocational education experience for the more than 25 evaluation teams conducting assessments during Spring 2012, when Crabtree was appointed to be on the team, whether he was in the ACCJC data base of available reviewers from 2006 until 2012, or about the number of other prospective team members in the Commission’s extensive database with “expertise” in vocational education. Why wasn’t such information, or that data base list cited and presented with the Report? Why were other relevant facts entirely ignored?

The Complaint alleges that Mr. Crabtree had served, before the March 2012 evaluation of CCSF, on just one California community college evaluation team - 10 years earlier, in 2002, in regard to San Joaquin-Delta evaluation. Mr. Crabtree had served on an accreditation team in 2004 for Kapi’olani College in Hawaii, and in 2006 for now defunct, private Brooks College. This is hardly a resume of extraordinary experience. The April 30<sup>th</sup> Complaint alleges as much - the Reply does not even mention these facts.

Ms. Beno presumptively did select Mr. Crabtree for the CCSF evaluation team because she oversees the Commission’s staff, including Vice President Jack Pond, and the entire

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appointment process. This is confirmed by her October 4, 2010 memo to CEO's in which she recruits evaluation team candidates. (**Attachment 6**) Whether the idea to appoint Crabtree came from Ms. Beno or her vice president or someone else is irrelevant. By virtue of her position as President, she supervises team selection, she can approve or disapprove appointments, and she solicits the list of eligible team members for the ACCJC data base (See **Attachment 6**).

Second, the existence of personal relationships between the ACCJC staff or Commission, and a team member, constitutes a conflict in the context of a so-called independent evaluation "team" - both in actuality and in appearance. That the Commission never previously "viewed" a spouse of a Commission executive as such is not a defense. How many prior such relationships have occurred - besides the three earlier occasions when Mr. Crabtree was selected for teams (in 2002, 2004 and 2006)? What prior opinions, if any, were previously obtained by the Commission in regard to the propriety of such a situation, if it arose before? And how can the Commission justify such an appointment given the repeated emphasis on avoiding conflicts, or their appearance, in the Commission's policies and Manuals? None of these issues or facts are discussed in the "Report." The reality is that the conflict resulting from Mr. Crabtree's appointment has been readily identified by many educators - administrators, trustees and faculty - since it was pointed out by CFT - who have expressed dismay at the appointment of Mr Crabtree. In view of the earlier alleged conflict arising over Mr. Crabtree's alleged distribution of confidential commission information (discussed at length in the April 30<sup>th</sup> Complaint), it is impossible to reconcile Crabtree's appointment with the many Commission policies against the appearance of a conflict of interest.

That Ms. Beno and Mr. Crabtree had "no prior relationship" - as emphasized in the Reply - with CCSF would, if it were the case, be irrelevant, as it is the relationship between the two of them which creates the conflict, since the evaluation team is expected to be independent of the Commission. As the Complaint explains, however, Mr. Beno does have a prior relationship with CCSF - she authored the accreditor's letters to CCSF issued in 2006, 2007, 2009 and 2010, which the team read to prepare for the visit, and which they cited in their evaluation Report. The Complaint alleged the uncontroverted fact that Mr. Crabtree, as a member of the 2012 Evaluation Team, **was responsible for reading, interpreting and relying on the contents of the four letters written by his wife** in 2006, 2007, 2009 and 2010, in the context of CCSF's response to recommendations from ACCJC.

The Report does not deny Mr. Crabtree's extensive role in the evaluation of CCSF which is outlined in the April 30<sup>th</sup> Complaint, and disregards the legal doctrine that through the conflict Ms. Beno was putatively a member of the evaluation team.

State law recognizes that a worker should not be in a position to evaluate a spouse, yet

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here Mr. Crabtree was placed in such a position - to determine how to interpret those letters in the context of the accreditation criteria. And then, after the team visit, Ms. Beno and the Commission were placed in the position of evaluating a Report in which Ms. Beno's husband had a significant contribution, one deriving from his "expertise." If Ms. Beno were still employed as a college president in Peralta, she would not be permitted to evaluate her husband, a Peralta employee. But that is, in essence, what took place in the CCSF evaluation. We allege that the relationship between the two of them prejudicially compromised the evaluation, and the Report simply neglects to confront the issue.

### **C. Failure to Obtain a Signed, Recommendation for Action in March 2012**

ACCJC disregards the allegation (See April 30<sup>th</sup> Complaint, p. 108-111) of apparent procedural error, raising questions that the March 2012 CCSF site-visit Evaluation Team was not allowed to make an action recommendation - e.g. for accreditation, warning, probation, etc.

Instead of confronting this allegation, ACCJC responds by claiming that a "confidential recommendation" was signed by all and provided to the Commission at its June 6-8, 2012 meeting. No documentation was provided in the Reply to support this assertion, and there was no effort to explain what "confidential recommendation" - whether for specific deficiencies to correct or for recommended action by the Commission - was signed by the team during the team visit in March 2012, as ACCJC Policy requires.

The site visit team completes two recommendations - one for action such as accreditation or probation - and another for specific requirements as to deficiencies in the Standards and Eligibility Requirements. Complainants do not dispute that the later recommendation was done. Rather, Complainants allege there is evidence the first - the action recommendation - was not completed. This issue is simply not discussed. If such a document was obtained from the team in March 2012, then the Commission should produce it for inspection. Saying "a recommendation" was presented in June 2012 does not respond to the accusation.

### **D. Standard III.D. - Fiscal Resources**

The Commission's response to the April 30<sup>th</sup> Complaint regarding its evaluation of CCSF's financial resources, similarly ignores the issues alleged by CFT. The ACCJC response focuses on just one specific issue, out of many, alleged in the Complaint regarding the Commission's evaluation of long-term liabilities.

In the Complaint this issue regarding GASB 45 is presented in over 40 pages of evidence and argument. First, the April 30<sup>th</sup> Complaint alleged that the Standard for which the

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Commission was citing institutions as being deficient - prefunding as supposedly required by GASB 45 - conflicted with California public policy (the position of the State community colleges). The April 30<sup>th</sup> Complaint alleges that under the broad language of the Standard, and in accordance with the longstanding public policy of California, CCSF did “adequately plan for” and “fund” its future liabilities.

Second, the Complaint alleged that ACCJC’s requirement of prefunding of estimated GASB 45 liabilities was not widely accepted by educators and other accrediting bodies. The Report entirely ignores this important allegation.

Third, the Complaint alleged that there were *conflicts of interest* arising from multiple ACCJC’s Commissioners and team members serving at various times on the Board of an investment consortium that benefitted financially from the application of the “GASB 45” Standard as demanded by ACCJC. This issue was also ignored in the Reply, despite its seriousness. The Commission’s Reply offers no explanation or justification regarding the alleged conflict of interest that arose from ACCJC’s allowing Board members of an investment pool (JPA) that benefitted from ACCJC’s inaccurate interpretation GASB 45, and interpretation of its Standards, to serve as team members or team chairs, or allowing some of those who were involved in the creation or activities of the JPA, to serve as commissioners of ACCJC, or chair the Commission’s task force on the financial resources Standard, where they would be influential over Commission’ policies in regard to “prefunding.” No evidence was presented to refute these allegations, which appear at pages 124 - 167 of the April 30<sup>th</sup> Complaint.

And fourth, the April 30<sup>th</sup> Complaint asserted that the Commission must restrict its evaluation of institutions to the accreditation time period of six years ( 34 CFR §602.18), and that it does not have the authority to evaluate the hypothetical financial resources and stability of an institution, projected over 30 years. This issue too was ignored.

Despite the lengthy discussion of this Standard in the April 30<sup>th</sup> Complaint, the Commission’s response merely parroted back the text of the Standard, and stated that CCSF was properly found deficient. There was no justification or evidence offered as to why the Commission believes that it has the power to sanction a college for problems it deems possible to occur *30 years in the future*. There was no explanation as to why paying the full amount of the present costs of retiree health benefits each year was not sufficient “funding.” There was no examination of the impact of this policy on current allocation of educational resources, or allocation during the period of accreditation. And there was no reasoning as to why the Commission thought that the very specific method “pre-funding” OPEB into an “irrevocable trust” was the *only* acceptable method of planning for future liabilities under the actual text of its published Standards. Once again, the Commission failed to indicate any evidence that was

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considered in assessing the merit of these issues at all.

In short, the Commission response completely ignored the actual substance of the allegations of the complaint, and provided no evidence of actual investigative actions in their review.

**V. Conclusion**

In view of the Commission's failure to respond to the April 30<sup>th</sup> Complaint as required by Federal law, we respectfully request that the Department take appropriate action to require a response from the ACCJC, and further take ACCJC's response to the Complaint and Comment into account when it considers ACCJC's application for renewal of its recognition by the Secretary.

Respectfully submitted,

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AFT, AFL-CIO, AFT Local 2121, *et al.*

Attachments

Kay Gilcher, Director, Accreditation Division  
Office of Postsecondary Education  
US Department of Education  
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C:\Users\Bob\Documents\2101-AFT 2121-SF\Fiscal crisis - accjc\ACCJC Response to Complaint\Complaint ltr to US DOE re ACCJC  
Response to CFT-AFT complaint d 4, 6-4-13.wpd