



September 24, 2015

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U.S. Department of Education

SUBJECT: Written Comment: Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (ACCJC)

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Introduction

The Faculty Association of California Community Colleges (FACCC) is a 62 year-old statewide professional membership association, representing the interests of California Community College faculty. With over 11,000 faculty members across California, FACCC is widely considered by elected policy makers and media representatives to be among the most important voice in the California Community College system.

While accreditation has been a matter of longstanding interest, the past decade has seen an erosion of support and confidence in the work of the ACCJC. FACCC has taken advantage of the opportunity to publicly comment on changes to proposed accreditation standards and host forums for faculty on accreditation requirements. FACCC's award-winning professional journal, *FACCCTS*, has also featured numerous pieces on accreditation.

More significantly, this past year FACCC took the leadership in writing and advocating a legislative proposal in the California Legislature requiring the Chancellor of the California

Community College system to solicit feedback from community college stakeholders on the performance of our system's regional accreditor in advance of a hearing by NACIQI. That information would be transmitted to NACIQI for consideration in its deliberations in the recognition of our state's community college system's regional accreditor. This legislative proposal, Assembly Bill 404¹ (Chiu), received unanimous bipartisan support through the California Legislature and is awaiting signature on Governor Brown's desk.

Over the past seven years, there has been a marked decline in the position of FACCC's leadership toward the ACCJC. A once mildly critical, but overall even-handed approach, had shifted toward an openly distrustful posture. In this regard, FACCC is not alone. The California Federation of Teachers, California Teachers Association, and California Community College Independents—each serving as collective bargaining agents in various California Community College districts— have experienced similar transformations.

It is incumbent upon the Secretary of Education to understand why California Community Colleges are being sanctioned at increasing rates relative to the rest of the country, why employees at California Community Colleges are afraid to publicly criticize the increasingly burdensome and costly requirements for fear of retaliation, and why the approach of the ACCJC has resulted in litigation, a legislatively-mandated audit, and a letter of reproach by your very own department.

The following points illustrate FACCC's concerns and comments on the ACCJC.

**ACCJC'S LOSS OF CONFIDENCE WITH ALL STRATA OF THE CALIFORNIA
COMMUNITY COLLEGE SYSTEM JEOPARDIZES
ITS COMPLIANCE WITH 34 CFR SECTION 602.13**

When FACCC last submitted written comments to the U.S. Department of Education on the ACCJC, it argued that ACCJC's loss of confidence with *faculty* in the California Community Colleges jeopardized its compliance with 34 CFR Section 602.13. Today, the loss of confidence extends well beyond the faculty to all strata in the California Community Colleges.

The California Community Colleges recent Task Force report on accreditation declared the following:

The task force finds that:

- *The structure of accreditation in this region no longer meets the current and anticipated needs of the California Community Colleges.*
- *The ACCJC has consistently failed to meet the expectations outlined in section three of this report.*

¹ http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-0450/ab_404_bill_20150909_enrolled.pdf

- *On several occasions the ACCJC has promised changes and has offered reports detailing their efforts to address concerns, but these promises and reports have led to few significant improvements. f*
- *The California Community College system and its member institutions have lost confidence in the ACCJC. (emphasis added)²*

Over the past seven years, leaders across California Community Colleges have made numerous attempts to help improve the accreditation processes for the state's community colleges, including, but not limited to, commenting on changes to ACCJC standards and policies, organizing workshops, participating in task forces and other governmental discussions on compliance. The brazen disinterest in developing a more cooperative approach to accreditation, where institutions and the ACCJC can work together on institutional improvement—particularly showcased by the disrespect shown to former California Community College Chancellor Jack Scott in his attempt to address the Commission—has led to a loss of confidence by leaders in the Commission.

The disproportionate sanction rate imposed by the ACCJC on its member institutions compared to other regional accreditors has been a key reason for this deterioration of confidence. It was also included as a central focus of the California State Auditor's report on accreditation:

Between 2009 and 2013, [ACCJC] took 269 accreditation actions—which included reaffirming accreditation, sanctioning an institution for noncompliance, or acting to terminate accreditation—on its member institutions and issued 143 sanctions, a sanction rate of roughly 53 percent. By comparison the other six regional accreditors together had a sanction rate of just over 12 percent.³

It must be emphasized that California Community College leaders neither question the value or function of accreditation. Accreditation serves as a critical safeguard to students and taxpayers alike that the institutions employ sound educational and fiscal standards. Micro-managing public institutions of higher education that comply with the legal standards set forth by their state's legislature and applicable case law is an entirely different matter. ACCJC cannot continue to function without the necessary support of its institutional employees. That support has significantly deteriorated, triggering the need for serious examination by the Department of Education and federal government.

² 2015 Task Force on Accreditation California Community Colleges Chancellor's Office, p. 8.
<http://californiacommunitycolleges.cccco.edu/Portals/0/reports/2015-Accreditation-Report-ADA.pdf>

³ California State Auditor: California Community College Accreditation Colleges Are Treated Inconsistently and Opportunities Exist for Improvement in the Accreditation Process Report 2013-123, p. 3.
<https://www.auditor.ca.gov/pdfs/reports/2013-123.pdf>

FACCC, along with many other faculty and management organizations, have diverted time, energy and resources to communicate to the federal government the implications of the lack of confidence in ACCJC. The concern of retaliatory sanctions by the ACCJC, however, is prevalent throughout the California Community College system, deterring critical voices from communicating their experiences to the U.S. Department of Education. This chilling effect on both free speech and good governance prompted FACCC to construct and develop Assembly Bill 404 (Chiu) which is currently awaiting a signature by Governor Brown. In a legislature that is deeply divided between Democrats and Republicans, AB 404 received unanimous support throughout the process.

As noted in the bill analysis for the final State Senate floor vote:

*According to the [Assemblymember Chiu], "there has been a historical lack of accountability for an accrediting agency overseeing the [California Community Colleges]. This deficiency is due to **fear of retribution**, scarce local resources, and the absence of a pathway for [California Community Colleges] and other local stakeholders to provide meaningful feedback during an accrediting agency's performance review process for continued accreditation recognition." [Assemblymember Chiu] that in past NACIQI reviews of ACCJC, there has not been a strong voice for the [California Community College] system as a whole; further, the [California Community College] system does not currently have a method for soliciting feedback from colleges, faculty, and other stakeholders. [Assemblymember Chiu] believes that increasing participation in the review process will increase accrediting agency accountability. (emphasis added)⁴*

The distrust in ACCJC is so much greater in 2015 than in 2013, the last time the U.S. Department of Education solicited third party comments, that in January 2015 the California Community Colleges Board of Governors changed Title 5 California Code of Regulations Section 51016 to remove the ACCJC as the named accreditor for the California Community Colleges.⁵ The Board's action followed the California State Auditor's recommendation, stating:

To allow colleges flexibility in choosing an accreditor, the chancellor's office should:

- ***Remove language from its regulations naming the commission as the sole accreditor of California community colleges while maintaining the requirement that community colleges be accredited. (emphasis added)***
- *Identify other accreditors who are able to accredit California community colleges or who would be willing to change their scopes to do so.*

⁴ Senate floor analysis, AB 404 (Chiu), p. 4.

http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0401-0450/ab_404_cfa_20150902_195312_asm_floor.html

⁵ See http://extranet.cccco.edu/Portals/1/ExecutiveOffice/Board/2015_agendas/January/2.4%20Attachment%201.pdf

- *Assess the potential costs, risks, and feasibility of creating a new independent accreditor.*⁶

In conducting its evaluation of ACCJC, NACIQI must attend to the overwhelming sentiment of the California Community Colleges, the largest system of American public higher education, in the extreme lack of confidence in ACCJC. To the extent that the factual evidence as provided by this, along with many other third-party comments and related reports, is lacking to remove federal recognition of ACCJC pursuant to a lack of compliance of 34 CFR Section 602.13, FACCC recommends a legislative change to the U.S. Code to require a higher degree of confidence in an accreditor as a condition for federal recognition than what currently exists by the California Community Colleges in the ACCJC.

ACCJC EXERCISE OF INSTITUTIONAL EVALUATIONS VIOLATES 34 CFR SECTION 602.15(a)(3)

Pursuant to the Code of Federal Regulations, an accrediting agency “meets the requirement” for “administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition” if it has “Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions.”

As noted in the August 13, 2013 letter from the Department of Education to ACCJC President, Dr. Barbara Beno, the aforementioned regulation “expects a good faith effort by the agency to have both academic and administrative personnel reasonably represented.” The letter continued: “One academician on an evaluation team comprised of eight and 16 individuals [referring to City College of San Francisco], as was the case for the April 2013 and March 2012 evaluation teams, respectively of CCSF, is not reasonable representation.”

The California State Auditor found similar instances in other colleges. “We identified similar concerns regarding faculty representation in our review of three other institutions. The commission appeared to assign just one faculty member to a team of nine that conducted the comprehensive evaluation of American River College in October 2009. Further, a team conducting a visit to Solano in 2008 appeared to contain no faculty, based on the occupational titles of team members.”⁷

In examining the practice of the ACCJC in this arena, the California State Auditor concluded, “although federal regulations require that evaluation teams have both academic and administrative personnel, according to USDE, the commission [ACCJC] has not ensured reasonable representation of faculty on its evaluation teams.”⁸

This violation of 34 CFR 602.15(a)(3) reflects a pattern of disregard for institutional due process reflected in this letter and others from similarly situated organizations.

⁶ California State Auditor Report on Accreditation, op. cit., p. 49.

⁷ California State Auditor Report on Accreditation, op. cit., p. 44.

⁸ Ibid.

ACCJC’S POLICY OF SHREDDING DOCUMENTS VIOLATES 34 CFR SECTION 602.15(b)(1) and (2)

Without public input, the ACCJC revealed its new policy on shredding documents at its meeting on June 7, 2013. The policy seemingly violates 34 CFR Section 602.15(b), stating that “the agency maintains complete and accurate records of (1) Its last full accreditation or pre-accreditation review of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and (2) All decisions made throughout an institution's or program's affiliation with the agency regarding the accreditation and pre-accreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.”

What’s most important is that the decision on document shredding was announced at the time critical decisions were being made on the future of City College of San Francisco. With litigation certain to follow such a momentous decision, transparency in the process was absolutely critical. Shredding documents not only violates any semblance of transparency, it openly infringes upon the due process of CCSF, its students, faculty, and other personnel in their ability to judicially challenge the ACCJC’s decisions.

The lack of transparency on the part of ACCJC has also led to the introduction of California Assembly Bill 1397 (Ting),⁹ also called the “California Community Colleges Fair Accreditation Act of 2015.” This measure has also received bipartisan support and is currently awaiting a floor vote in the State Senate.

ACCJC’S CONFLICTS OF INTEREST VIOLATE 34 CFR SECTIONS 602.14(a)(3), 602.15(a)(6), and 602.25

Here, there is no dispute of facts relative to a serious and egregious conflict of interest involving the participation on an evaluation team by the spouse of the Commission’s president. As noted by the Department’s Accreditation Group in its August 13, 2013 letter to the Commission:

Therefore, the Accreditation Group determined that this practice [referring to the spousal conflict of interest] precludes us from determining that the ACCJC has clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, as required. The agency must demonstrate that it has clear and effective controls against conflicts of interest, and the appearance of conflicts of interest.

The conflicts are not, however, limited to the participation of the president’s spouse on an evaluation team. As noted by the City Attorney of San Francisco, the ACCJC “unlawfully

⁹ See http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1397_bill_20150904_amended_sen_v94.pdf

allowed its advocacy and political bias to prejudice its evaluation of college accreditation standards. The ACCJC has been a leading advocate to dramatically reshape the mission of California's community colleges through more restrictive policies focusing on degree completion to the exclusion of additional vocational, remedial and non-credit offerings. The controversial political agenda . . . represents a significant departure from the abiding 'open access' mission pursued by San Francisco's Community College District since it was first established, and also repeatedly affirmed by the state legislature."

**ACCJC'S INCONSISTENT EVALUATIONS, AMBIGUOUS RECOMMENDATIONS
AND UNCLEAR TIMELINES VIOLATE
34 CFR SECTIONS 602.18(b) AND 602.18(e)**

Of all the criticisms against ACCJC, the one most commonly repeated by community college leaders is the inconsistency in the evaluation process, accompanied by ambiguous recommendations and unclear timelines. The sheer numerical distance in the number of sanctions levied by the ACCJC compared to the other accrediting agencies reflects the vagueness of the process.

Recently, faculty leaders have also complained about the inclusion of such collective bargaining issues as Cost of Living Adjustment in the sanction process when this is not part of the accreditation standards and reserved, under state law, to discussions between the institution and collective bargaining agents.

The August 13, 2013 correspondence between the Accreditation Group of the Department of Education and the ACCJC notes that "Section 602.18(e) of the Secretary's Criteria for Recognition requires that the agency provide the institution with a detailed written report that clearly identifies any deficiencies in the institution's compliance with the agency's standards. By using the term recommendation to mean both noncompliance with standards and areas for improvement, the agency does not meet the regulatory requirement to provide a detailed written report that clearly identifies any deficiencies in the institution's compliance with the agency's standards. This lack of clear identification impacts the agency's ability to provide institutions with adequate due process (emphasis added)."

This issue was highlighted by the very first finding of the California State Auditor in its report on the ACCJC, who declared: **INCONSISTENT APPLICATION AND LACK OF TRANSPARENCY ARE WEAKENING THE ACCREDITATION PROCESS** (emphasis in original).¹⁰ In discussing how this inconsistency applied to City College of San Francisco, the Auditor noted:

In July 2013 the commission notified CCSF of its decision to terminate its accreditation after the college had been on the commission's most severe level of sanction for one year although federal regulations allow accreditors to grant colleges up to two years to address accreditation sanctions. What is more, in reviewing the commission's accreditation decisions for California's community colleges between January 2009 and January 2014, we found that the commission allowed 15

¹⁰ California State Auditor Report on Accreditation, op. cit., p. 10.

*institutions to take two years to address their sanctions and allowed six other institutions to take more than two years to resolve theirs. Further, the commission acted to terminate the accreditation even though CCSF appeared to meet one of the commission's criteria for granting an extension.*¹¹

In expanding on these findings, the Auditor also declared:

*In practice, the commission has not consistently sanctioned noncompliant California community colleges. Between January 2009 and January 2014, the commission took action to reaffirm the accreditation of 48 California community colleges following a comprehensive evaluation of each. In 27 of the 48 reaffirmations, the commission indicated that the institutions were required to correct deficiencies or the commission would terminate accreditation, thus indicating that the institutions did not comply with commission standards. Based on its policies and the commission president's statement, the commission should have sanctioned these 27 community colleges, but it did not.*¹²

More troubling is the allegation of favoritism by the ACCJC in institutions represented on the Commission itself. This allegation has been raised in public forums and appeared in the State Auditor's report:

*Based on our review of commission newsletters published between 2009 and 2014, 14 of the commissioners were from California community colleges. The commission sanctioned only two of those institutions during the respective commissioners' tenure, a rate of 14 percent. In comparison, between January 2009 and January 2014, the commission sanctioned 63 of the 112 California community colleges it accredits, a rate of 56 percent.*¹³

Here, the circumstantial evidence of bias and favoritism is overwhelming, and appears in direct contradiction to the Code of Federal Regulations. The lack of direct evidence to establish bias does not emanate from the facts in question, but from the lack of transparency in the ACCJC's process, another major concern of the California State Auditor's report. As noted by the State Auditor, "Transparency is especially important because the commission may alter the evaluation team's recommendations before publishing the final report. . ."¹⁴

As with other aspects of the ACCJC, the issue of transparency has led to a never-ending game of cat and mouse between the Commission and the U.S. Department of Education in which the Commission has tried to hide behind the Department for developing and implementing its policies with the Departmental correspondence indicating otherwise.

Transparency, or lack thereof, by the ACCJC is a cross-cutting theme behind the State Auditor's Report, the Chancellor's Office Task Force Report, and the pending Assembly Bill

¹¹ Ibid.

¹² California State Auditor Report on Accreditation, op. cit., p. 32.

¹³ California State Auditor Report on Accreditation, op. cit., p. 35.

¹⁴ California State Auditor Report on Accreditation, op. cit., p. 34.

1397 (Ting). With minor exception, all levels of government across the United States have emphasized transparency in public functions, whether those are conducted by public or private entities. As noted, *infra*, the continued lack of transparency conceals evidence on ACCJC's practice. Nonetheless, the level of circumstantial evidence on the direct violation of these sections of the CFR remains overwhelming.

Conclusion

FACCC, like other organizations in the California Community Colleges, remains committed to an accreditation process that is both fair and effective. In examining the ACCJC, however, it is impossible for FACCC to conclude that the ACCJC has had anything but a deleterious effect on students. Enrollment at CCSF declined by 21 percent when the institution was on Show Cause (compared to a one percent growth in student population statewide).¹⁵ In January of this year, it was noted that overall enrollment at CCSF declined 27 percent since the spring of 2012.¹⁶ The enormous sums diverted to litigation and legislative advocacy confronting ACCJC could have been better spent on developing new programs and teaching methodologies to benefit students.

The California Community Colleges Board of Governors has taken an enormous step in removing ACCJC as the named accreditor for its institutions in the California Code of Regulations and in developing its Task Force Report on Accreditation which calls for the selection of a new accreditor. At this point, the federal government must closely examine the overwhelming evidence demonstrating incontrovertible violations by the ACCJC of the Code of Federal Regulations.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Jonathan Lightman
Executive Director

JRL/jl

¹⁵ California State Auditor Report on Accreditation, op. cit., p. 225.

¹⁶ See <http://archives.sfoxaminer.com/sanfrancisco/ccsf-sees-lowest-enrollment-drop-since-2012/Content?oid=2918086>