



City Attorney Dennis Herrera News Release

For Immediate Release:
August 22, 2013
Contact: Matt Dorsey
(415) 554-4662

Herrera sues to block accreditors from shuttering City College of San Francisco

Dual actions allege conflicts of interest, retaliation by ACCJC; unlawful delegation of public duties by State Board of Governors to unaccountable private agency

SAN FRANCISCO (Aug. 22, 2013)—City Attorney Dennis Herrera today filed dual legal challenges involving the termination of City College of San Francisco’s accreditation, which, if successful, could enjoin private accreditors from shuttering California’s largest community college, and require the state governing board charged with evaluating college standards and eligibility for public funding to reassume its legal duties.

Herrera’s lawsuit against the Accrediting Commission for Community and Junior Colleges, or ACCJC, alleges that the private agency unlawfully 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—whose proponents include conservative advocacy organizations, for-profit colleges and corporate student lenders—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. Herrera’s civil action alleges that the commission acted to withdraw accreditation “in retaliation for City College having embraced and advocated a different vision for California’s community colleges than the ACCJC itself.” The complaint filed in San Francisco Superior Court this morning concludes that the accrediting commission’s multiple conflicts of interest, improper evaluation process and politically motivated decision-making constitute unfair and unlawful business practices under California law.

In a separate legal action also filed today, Herrera targeted improper actions by the Board of Governors of the California Community Colleges, the public agency charged by statute with

[MORE]

overseeing the state's 112 community colleges and 72 community college districts. The legal challenge and rulemaking petition alleges that the state board impermissibly delegated its statutory obligations to set standards and determine eligibility for public funding to a wholly unaccountable private entity in the ACCJC.

"Nothing about the actions I've filed today should distract or delay City College from doing everything in its power to solve the problems threatening its survival," said Herrera. "But neither should these steps tempt accreditors to consider—for even one moment—retaliating against City College for legitimate challenges to their conduct and authority under the law."

"The evidence is clear that the ACCJC ignored multiple conflicts of interest, flouted laws, and allowed its political advocacy to color public responsibilities it should frankly never have been given," Herrera continued. "For this, the State Board of Governors is also to blame for unlawfully ceding its public duties to a private entity wholly beyond the reach of public accountability. Though I seek to enjoin the ACCJC from improperly terminating City College's accreditation, the issues raised by both actions go far beyond any single college alone. This accreditation process has exposed bias, institutional flaws and illegalities in the oversight of the nation's largest higher education system. It potentially affects 72 community college districts, 112 community colleges, and more than 2 million students in California. The issues are serious, and they merit rigorous scrutiny."

Herrera's complaint against the ACCJC outlines its extensive financial and political relationships with advocacy organizations and private foundations representing for-profit colleges and powerful student lender interests, with which the ACCJC has in recent years shared a policy agenda to significantly narrow community colleges' longstanding open access mission. The so-called "student success" agenda prioritizes courses "geared toward helping students walk across a stage wearing a cap and gown on graduation day"—to the detriment of broader educational offerings that include remedial courses to benefit underserved and disadvantaged students, under- and unemployed adults, seniors and disabled students, new parents, immigrants learning English as a second language, and other non-traditional learners.

Over a period of months preceding and during City College of San Francisco's evaluation process for re-accreditation, the college's trustees, faculty and students increasingly found themselves at odds with the ACCJC's aggressive advocacy to push California's community colleges toward a junior college, degree-focused model. Contentious disputes included arguments over recommendations by the "Student Success Task Force" and the "Seymour-Campbell Student Success Act of 2012," or S.B. 1426, which sought to implement several task force recommendations statewide. The controversial state legislation—strongly supported by ACCJC and opposed just as strongly by advocates from the City College of San Francisco community—would have limited low-income students' eligibility for fee-waivers to those who identified a specific degree or certificate, and who didn't exceed a "maximum unit cap." Both provisions were later eliminated from the legislation, largely at the urging of open access advocates, including many from the City College community.

Herrera's lawsuit goes on to detail retaliatory actions taken by ACCJC, beginning with its "show cause" sanction on July 2, 2012 through its unexpected decision less than a year later to terminate accreditation for the college of 85,000 students. Several bases for ACCJC's negative findings suspiciously mirror policy conflicts between the ACCJC and the City College community, including criticisms that the "college has not demonstrated the will to reexamine the scope of the college's mission" and that "there is no process to reduce the scope of programs and services."

The complaint additionally offers evidence of ACCJC’s demonstrable double-standard in evaluating City College as compared to its treatment of six other California colleges under identical “show cause” sanctions during the preceding five years. Though several of the sanctioned schools failed to adequately correct their inadequacies, none saw their accreditation terminated. Yet despite ACCJC’s own acknowledgement that City College made “significant progress” in addressing accreditors’ recommendations, the ACCJC voted in closed session in June to terminate City College of San Francisco’s accreditation effective July 31, 2014.

City College had never once been sanctioned previously, Herrera’s complaint contends, noting that the ACCJC’s retaliatory bias is also evident from the college’s educational success by multiple objective standards. City College boasts a remedial progress rate in English as a Second Language, or ESL, of 52.3 percent—more than double that for California community colleges statewide. Its completion rate of 55.6 percent exceeds the California community college average of 49.2 percent; and its 75.2 percent overall persistence rate (which gauges student matriculation over consecutive semesters) far outpaces the system-wide average of 65.8 percent. Similarly, City College students transferring to the California State University system achieve a notably higher Cal State grade point average than the statewide average for community college transfers—3.08 for City College graduates as compared to 3.03 statewide.

The cases are: *People of the State of California ex rel. Dennis Herrera v. Accrediting Commission for Community and Junior Colleges, et al.*, San Francisco Superior Court No. 13-533693, filed Aug. 22, 2013; and *In re Legal Challenge and Petition for Rulemaking*, Before the Board of Governors of California Community Colleges, filed Aug. 22, 2013.

#

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT

2013 AUG 22 AM 9:19

CLERK OF THE COURT
BY: J. STEPPE
DEPUTY CLERK

DENNIS J. HERRERA, State Bar #139669
City Attorney
THERESE M. STEWART, State Bar #104930
Chief Deputy City Attorney
OWEN CLEMENTS, State Bar #141805
Chief of Complex & Special Litigation
THOMAS S. LAKRITZ, State Bar #161234
YVONNE R. MERE, State Bar #173594
SARA J. EISENBERG, State Bar #269303
1390 Market Street, 7th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3800
Facsimile: (415) 554-3985
E-Mail: sara.eisenberg@sfgov.org

Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA
ex rel. DENNIS HERRERA, SAN
FRANCISCO CITY ATTORNEY,

Plaintiff,

vs.

ACCREDITING COMMISSION FOR
COMMUNITY AND JUNIOR COLLEGES;
and DOES 1-50, inclusive,

Defendant.

Case No. CGC-13-533693

COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES FOR VIOLATIONS OF
BUSINESS AND PROFESSIONS CODE
SECTION 17200

1 Plaintiff, the People of the State of California, acting by and through San Francisco City
2 Attorney Dennis Herrera, is informed and believes and alleges as follows:

3 INTRODUCTION

4 1. Community colleges are an integral part of California's pioneering tripartite system of
5 higher education. California community colleges provide educational and vocational opportunities to
6 *anyone*, regardless of income or ability. The open access mandate for California community colleges
7 has long been a part of California's educational policy. Indeed, for decades ensuring open access to
8 educational and vocational programs has been one of the most important functions of California's
9 community colleges.

10 2. For many years, City College of San Francisco ("City College") has embraced this
11 open access mission, providing access to educational and vocational training for diverse ethnic and
12 socio-economic communities in San Francisco. Without City College, tens of thousands of students
13 would have no viable option for higher education or vocational training.

14 3. Recently, however, the continued commitment to open access to educational and
15 vocational opportunities has been questioned as part of a dialogue on the future of higher education.
16 Nationally, there has been move a toward requiring educational institutions to focus their resources on
17 ensuring that students complete degree or certificate programs, as opposed to ensuring open access to
18 educational and vocational training for all.

19 4. In California, this conversation has taken place in debates at the Board of Governors of
20 the California Community Colleges ("BOG") and the California Legislature. For the last two years,
21 there has been a heated discussion about the future of California's community colleges, with City
22 College faculty and staff taking the lead as vocal advocates in the fight to maintain community
23 colleges for anyone seeking educational and vocational training opportunities. Others, however, are
24 pushing an agenda that would fundamentally change and limit the mission of community colleges in
25 California.

26 5. Defendant, the ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR
27 COLLEGES ("ACCJC"), has been an outspoken advocate of the push to eliminate the open access
28 mandate for California's community colleges—actively supporting controversial task force

recommendations and legislation that would eliminate the open access policy in favor of a narrower junior college model focused on degree completion.

6. While publically opposing City College’s open access mission, the ACCJC was in the midst of evaluating City College for reaffirmation of its accreditation. As evidenced by the ACCJC’s evaluation and sanction of City College, the ACCJC—a private entity with no public accountability and unfettered discretion to set accreditation standards and evaluate colleges’ compliance with those standards—has used the accreditation process to squelch public debate on the breadth of the mission to be served by community colleges in California.

7. To this date, the ACCJC refuses to acknowledge the conflict of interest it created by evaluating City College while actively lobbying the BOG and California Legislature to end the open access policy for which City College has strenuously advocated. Instead, despite the fact that City College made significant efforts to improve its financial, administrative, and educational policies, in June 2013 the ACCJC voted to terminate City College's accreditation effective July 2014.

8. By ignoring the conflict created by its actions, undertaking an evaluation process that violated several provisions of federal law, and ultimately voting to terminate City College's accreditation in retaliation for City College having embraced and advocated a different vision for California's community colleges than the ACCJC itself, the ACCJC violated California's Unfair Competition Law, Business and Professions Code Section 17200 *et seq.*

PARTIES

9. Plaintiff the PEOPLE OF THE STATE OF CALIFORNIA (“PEOPLE”), by and through San Francisco City Attorney Dennis J. Herrera, prosecute this action pursuant to California Business and Professions Code Section 17200, *et seq.*

10. Defendant ACCREDITING COMMISSION FOR COMMUNITY AND JUNIOR COLLEGES (“ACCJC”) is a nonprofit corporation, organized under the Nonprofit Public Benefit Law of the State of California, with its principal office in Novato, California.

11. The PEOPLE are not aware of the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Each fictitiously named Defendant is responsible in some manner for the violations of law alleged. The

1 PEOPLE will seek leave of court to amend this complaint to allege their true names and capacities
2 when that information is ascertained.

3 JURISDICTION AND VENUE

4 12. The Superior Court has jurisdiction over this action. The ACCJC is conducting
5 unlawful, unfair and/or deceptive business practices in California, and the City Attorney has the right
6 and authority to prosecute these cases on behalf of the PEOPLE.

7 13. Venue is proper in this Court because the ACCJC transacts business in the City and
8 County of San Francisco ("City") and because many of the acts complained of occurred in the City
9 and/or caused injury to citizens of the City.

10 FACTUAL ALLEGATIONS

11 City College Of San Francisco

12 14. City College has been providing educational services to San Francisco residents since
13 1935. In its first year, City College served approximately 1,100 students, but that number quickly
14 began to grow. When the "Baby Boomer" generation began graduating from high school in the 1960s,
15 City College's enrollment rose dramatically—from 8,400 students in the fall of 1962 to 17,763
16 students in 1971.

17 15. Meanwhile, in 1970, the College separated from the San Francisco Unified School
18 District and became a part of the newly formed San Francisco Community College District
19 ("SFCCD"). Under the leadership of a new chancellor, Louis F. Batmale, City College began a bold
20 original educational program to bring relevant credit and non-credit classes to adults throughout the
21 City's various neighborhoods. By the time Batmale retired in 1977, City College's enrollment had
22 grown to over 60,000 students.

23 16. During the next two decades, City College continued to expand its academic programs
24 and services to the community. "In response to the changing needs of those living and working in San
25 Francisco, innovative courses, programs, and services were added throughout the City, continuing the
26 college's long-established commitment to offer educational opportunities to San Franciscans from all
27 walks of life." Julia Bergman, Valerie Sherer Mathes & Austin White, *City College of San Francisco*
28 (2010).

1 17. In recent years, City College has served a highly diverse student body of more than
2 85,000 students per year. In the 2009-2010 school year, for example, approximately 30% of the
3 student body was Asian, 27% was White, 18% was Hispanic, 8.5% was African American and 6.75
4 was Filipino; approximately 15% of the students were nineteen years old or younger, 47% were in
5 their twenties, 18% were in their thirties, 10% were in their forties and 10% were in their fifties or
6 older.

7 18. City College has ten campuses—Ocean (Ingleside), Mission, Civic Center, Chinatown,
8 Southeast (Bayview), Evans, Noe Valley, John Adams (on Masonic), Fort Mason, and Downtown—
9 and over a hundred single class “instructional sites” throughout San Francisco in various office spaces,
10 spare classrooms, and other locations. City College offers dozens of different associate degrees,
11 hundreds of credit and noncredit certificate programs and thousands of classes—including noncredit
12 classes offered for free to anyone who could benefit from further education.

13 19. For many San Franciscans, City College is the only viable option for higher education.
14 For a very modest cost, students of all ages and backgrounds can attend City College to earn an
15 associate’s degree and to acquire sufficient credits to transfer to a four-year bachelor’s degree
16 program, and for no cost can take classes to acquire valuable skills that will allow them to find a job or
17 advance their careers.

18 20. Although the State of California provides funding to community colleges for both
19 credit and noncredit classes, the funding rate is significantly lower for noncredit classes. Accordingly,
20 when the State began cutting funding in 2008-2009, many California community colleges responded
21 by dramatically reducing noncredit courses. *See* Public Policy Institute of California, *The Impact of*
22 *Budget Cuts on California’s Community Colleges* 14-15 (March 2013). City College did not. City
23 College maintained hundreds of noncredit courses for the 2012-2013 year.

24 21. Many of these noncredit classes (e.g., automotive technology, construction, accounting
25 and bookkeeping, computer applications and health care) are designed to help adult learners improve
26 their job prospects or enhance their job skills.

1 22. City College's Older Adults Department offers free lifelong learning classes specially
2 designed for those 55 and older at more than 30 locations throughout San Francisco. Courses span a
3 wide range of disciplines, such as computer training, health and wellness, language arts and the arts.

4 23. The Child Development and Family Studies Department offers free parenting and child
5 observation classes to parents of young children who believe they would benefit from assistance and
6 education in facing the challenges of parenthood.

7 24. The free noncredit classes offered by Disabled Student Programs and Services include
8 Coping With Acquired Brain Injury, Stroke Communication, Job Search Skills, Community Living
9 Skills, Communication for the Blind and Lipreading.

10 25. The English as a Second Language ("ESL") Department, which is the largest
11 department in the college, provides free noncredit ESL classes to about 20,000 students every year.

12 26. City College is critical not only to the tens of thousands of students it serves—many of
13 whom are from immigrant and working class backgrounds—but to the fundamental promise of equal
14 opportunity in San Francisco.

15 **Accrediting Commission For Community And Junior Colleges**

16 27. The ACCJC is a private entity that accredits community and junior colleges in the
17 Western region of the United States.

18 28. ACCJC operates under the corporate entity the Western Association of Schools and
19 Colleges ("WASC"). WASC is recognized by the federal Department of Education ("DOE") as one of
20 six regional associations that accredit public and private schools, colleges, and universities in the
21 United States. The Western region covers institutions in California and Hawaii, the territories of
22 Guam, American Samoa, Federated States of Micronesia, Republic of Palau, Commonwealth of the
23 Northern Marianas Islands, the Pacific Basin, and East Asia, and areas of the Pacific and East Asia.

24 29. The accrediting activities of WASC are conducted by three entities: (a) the Accrediting
25 Commission for Schools, which handles all schools below the college level including elementary,
26 junior high, middle, high and adult schools; (b) the ACCJC, which handles public and private
27 postsecondary institutions that offer two-year education programs and award associate degrees; and (c)
28

1 the Senior College and University Commission, which handles public and private four-year colleges
2 and universities.

3 30. The ACCJC has two bodies: the Commission and the staff.

4 31. The Commission, made up of nineteen part-time voluntary Commissioners, sets
5 accreditation standards and makes decisions on the accreditation status of community and junior
6 colleges.

7 32. In 2010, a special task force created by California Community College's Consultation
8 Council filed a complaint with the DOE expressing concerns with the ACCJC's Commissioner
9 selection process.

10 33. After evaluating the complaints and responsive documentation submitted by the
11 ACCJC, the DOE concluded that the "processes and procedures by which Commissioners [were]
12 selected [did] not meet" federal requirements. Letter from Kay W. Gilcher, Director, Accreditation
13 Group of U.S. Dep't of Educ., to Barbara A. Beno, President, ACCJC (Aug. 24, 2010) at 1.
14 Specifically, the DOE concluded that the ACCJC failed to implement "clear and effective controls" to
15 protect against undue influence by the leadership of any related associated, or affiliated trade
16 organization or membership organization (*id.* at 2) and "against conflict of interest, or the appearance
17 of conflict of interest, in the [Commissioner] selection process." *Id.* at 3, 4.

18 34. The DOE also took issue with the fact that at five of the nine Commissioner Selection
19 Committee meetings held between 2005 and August of 2010, "the Commission Chair or Vice Chair
20 [was] either a member or ex-officio member of the committee, appointed by the Commission Chair.
21 There was one Commissioner Selection Committee where both the Commission Chair and Vice Chair
22 were members." *Id.* at 3. The DOE expressed concern that this "could result in [Commissioners]
23 wielding undue influence over the Committee." *Id.*

24 35. The ACCJC's bylaws were amended in response.

25 36. The ACCJC staff manages and supports the accreditation activities of the Commission.
26 ACCJC has an executive staff of six: a president—Dr. Barbara Beno—and five vice presidents. The
27 president is the Chief Executive Officer of the ACCJC. According to the ACCJC's bylaws, "the
28 general supervision, direction, and control of the operations of the ACCJC, including its business and

1 accreditation operations . . . reside with the President.” Bylaws of the ACCJC (as amended May 2013)
2 Art. VII, Section 6. The President is also an official spokesperson for the Commission to institutions
3 and the public. ACCJC, *Guide to Accreditation for Governing Boards* (Nov. 2012) at 3.

4 37. The ACCJC has been designated by the State Board of Governors of the California
5 Community Colleges (“BOG”)—a California state body tasked by the Legislature with setting policy
6 and providing guidance for the 72 community college districts and 112 colleges in California—as the
7 accreditor for the 112 community colleges in California. Thus, every community college in
8 California—including City College—must be accredited by the ACCJC in order to be eligible for state
9 funds.

10 38. ACCJC has sole and absolute discretion to set the standards by which member
11 institutions, including all California community colleges, will be evaluated for accreditation and
12 eligibility for state aid. The Commission also has sole and absolute discretion to make decisions on
13 the accreditation status of all member institutions. These decisions are not subject to review by, or
14 appeal to, the State or any other institution or entity.

15 **City College And ACCJC Engage In Heated Fight Over**
16 **The Mission Of Community Colleges**

17 ***“Open Access” For All Versus “Student Success” For Some***

18 39. For decades, community colleges—nationally and in California—have been focused on
19 ensuring open access to higher education for everyone capable of benefitting from attendance,
20 regardless of income, ability, or educational/vocational goals. In California, this “open access”
21 mission was outlined decades ago in the Master Plan for Education, and codified in the California
22 Education Code. *See* Educ. Code § 66201 (“The legislature hereby reaffirms the commitment of the
23 state of California to provide an appropriate place in California higher education *for every student who*
24 *is willing and able to benefit from attendance.*”) (Emphasis added).

25 40. California’s commitment to open access was reaffirmed in 1998. In A.B. 1725, Stats.
26 1998 ch. 973, *et seq.*, the State Legislature explained that although community colleges were “once
27 envisaged as ‘junior colleges’ devoted primarily to providing middle-class youth with a local option to
28 the lower-division years of college,” it became necessary for the institutions to rise to the challenge of

1 “retraining workers, teaching English to those recently among us, providing skills and opportunities
2 for the elderly, providing a second chance to those who were failed by our secondary schools, and still
3 providing lower division transfer education of quality and integrity for all who want it.” *Id.* § 1(i).

4 41. The Legislature further stated that in order for the State to fulfill its responsibility to
5 “provide to every Californian the opportunity to realize his or her intellectual, emotional, and
6 vocational potential . . . open access to a quality community college system must be affirmed for a
7 diverse student population, which includes, but is not limited to, recent high school graduates, senior
8 citizens, persons who are Caucasian, Black, Asian, and Hispanic, disabled men and women, persons at
9 a variety of income levels, businessmen and businesswomen, single parents, women reentering the
10 work force, high school dropouts, and persons with baccalaureate degrees.” *Id.* § 5(a); *see also id.*
11 §5(c) (“Open access to community colleges must be assured for all adults who can benefit from
12 instruction . . .”).

13 42. And, critically, the Legislature recognized that students’ “goals and aspirations . . .
14 often change during the educational experience and . . . include such diverse purposes as literacy
15 training, English acquisition and development both for persons whose primary language is English and
16 persons having other primary languages, vocational training, job reskilling, skills enhancement, and
17 education oriented toward transfer to a four-year college or university.” *Id.* § 5(b).

18 43. For decades, this open access mission was reflected in a State law that exempted certain
19 students from the requirement to pay community college enrollment fees (currently set at \$46 per unit
20 per semester). These Board of Governors fee waivers (“BOG Fee Waivers”) were available to all
21 students who demonstrated financial need—without regard to academic record, test scores, or other
22 qualifications.

23 44. At City College, a strong commitment to open access has been embodied in the depth
24 and breadth of services and courses offered. As detailed above (see ¶¶18-26, *supra*), City College
25 offers courses that bear credits and others that do not, pathways for traditional and non-traditional
26 learners, and opportunities to acquire English, gain job skills, and prepare for further education.

1 45. Recently, however, political rhetoric and policy priorities have shifted away from open
2 access and toward a narrow definition of “success” focused exclusively on students who will earn a
3 college degree or certificate.

4 46. This shift toward the “Student Success” agenda has been accompanied by a call to
5 realign public funding and priorities to focus on degree completion as the primary mission of
6 institutions of higher education, to the detriment of programs that serve students who, for a variety of
7 reasons, are less likely to graduate quickly with a certificate or degree. Such students include those
8 needing remedial education, those who need to work to support themselves while in college, and those
9 who are raising children while attending college, as well as non-degree seeking students such as
10 English language learners and other adults who seek to improve existing skills or learn new ones.

11 47. That call to focus public resources primarily on degree completion has been answered
12 by state legislatures across the country and by several large foundations including the Lumina
13 Foundation for Education (“Lumina”).

14 48. Lumina is a private foundation that was created in 2000 as the outgrowth of an asset
15 sale from USA Group, Inc. to SLM, Inc. (“Sallie Mae”).

16 49. USA Group, a tax exempt non-profit entity, was the parent company of USA Funds, the
17 nation’s largest private guarantor and administrator of student loans. In the 1990s, USA Group was
18 criticized by federal regulators and some members of Congress for the pay it gave to executives (its
19 president’s compensation totaled \$1.1 million in 1996) and for the profits it was making from the
20 student loan business. David Folkenflik, *President of student loan guarantor placed on leave Head of*
21 *USA Group was convicted of misdemeanor* (March 6, 1997); David Folkenflik, *Student loans generate*
22 *profits Middlemen provide guarantees, chase after defaulters* (March 2, 1997). In 1999, the company
23 had revenues of \$458.1 million and excess of revenues over expenses of \$150.6 million. PR
24 Newswire: *Sallie Mae Completes USA Group Transaction; New Executives and Board Members*
25 *Named* (July 31, 2000). Concerned that the government might challenge continuation of its tax
26 exempt status, USA Group developed a strategy to sell its operating assets to another entity. Lumina
27 Foundation, *From the Ground Up* at 5. In 2000, that strategy came to fruition with USA Group selling
28

1 most of its operating assets to Sallie Mae, a publicly traded U.S. corporation which, at the time, owned
2 and managed student loans for 5.3 million borrowers. *Id.* at 3.

3 50. The proceeds from the sale, totaling \$770 million, were directed to the newly formed
4 USA Group Foundation, which was renamed the Lumina Foundation in early 2001. Most of USA
5 Group's board members stayed with the foundation, and they were joined by four previous members
6 of the Student Loan Marketing Association, a Sallie Mae subsidiary. *Id.* at 4.

7 51. Through today, several members of Lumina's Board have ties to the student loan or for-
8 profit-college industry, including a former President and Chief Operating Officer of Sallie Mae and a
9 former president (now President Emeritus) of the University of Phoenix.

10 52. Lumina's stated mission is to increase the proportion of Americans with high-quality
11 college degrees, certificates and credentials nationwide to 60 percent by 2025. Theoretically, this
12 mission could be met through public and non-profit colleges as well as private for-profit colleges.
13 However, Lumina has funded programs that call for public community colleges to narrow their
14 offerings and focus on degree completion. Notably, when community colleges shrink their
15 programs—to, for example, focus exclusively on those students most likely to proceed quickly toward
16 degree completion—there is a correlating spike in for-profit college enrollment. *See* Tyler Kingkade,
17 *Community College Funding Shrinks, For-Profit Enrollment Crows: Treasury Report*, Huffington Post
18 (Dec. 26, 2012), available at [http://www.huffingtonpost.com/2012/12/26/community-college-for-](http://www.huffingtonpost.com/2012/12/26/community-college-for-profit_n_2340958.html)
19 [profit_n_2340958.html](http://www.huffingtonpost.com/2012/12/26/community-college-for-profit_n_2340958.html) (last visited Aug. 17, 2013).

20 53. Put simply, contracting community colleges, like City College, pushes students into
21 for-profit colleges and forces them to incur significant debt—to the benefit of for-profit colleges and
22 private lending institutions like Sallie Mae, which posted a 2012 profit of \$939 million. Sallie Mae
23 New Release, *Sallie Mae Reports Fourth-Quarter and Full-Year 2012 Financial Results* (Jan. 16,
24 2013).

25 54. This is not surprising since low-income and first-generation student populations—who
26 are more likely to attend a community college, and to need the non-traditional pathways offered by
27 community colleges—are also the prime target of for-profit colleges' marketing and recruitment
28 efforts. *See, e.g.*, Chris Kirkham, *For-Profit College Recruiters Taught To Use 'Pain,' 'Fear,'*

1 *Internal Documents Show*, Huffington Post (Feb. 8, 2011), available at [http://www.huffingtonpost.com](http://www.huffingtonpost.com/2011/02/08/for-profit-college-recruiters-documents_n_820337.html)
2 [/2011/02/08/for-profit-college-recruiters-documents_n_820337.html](http://www.huffingtonpost.com/2011/02/08/for-profit-college-recruiters-documents_n_820337.html) (last visited Aug. 17, 2013).

3 Such students often lack awareness of the different college options available and the knowledge and
4 support needed to evaluate those options. Training documents from several for-profit colleges, which
5 were obtained by a Senate oversight committee, illustrate that recruiters at for-profit colleges are
6 encouraged to increase enrollment by “focusing on emotions such as ‘pain’ and ‘fear’ to attract low-
7 income students who are struggling with adverse personal and financial circumstances.” *Id.* Indeed, a
8 recent report by the U.S. Departments of Treasury and Education found that “[c]ommunity colleges
9 are more likely to serve low-income and first-generation student populations than four-year schools,
10 and these students now constitute the bulk of the student population at for-profit schools.” U.S.
11 Department of the Treasury & U.S. Department of Education, *The Economics of Higher Education* 23
12 (Dec. 2012).

13 55. Moreover, associate degree and certificate programs at for-profit colleges average *four*
14 *times* the cost of such programs at comparable community colleges. U.S. Senate Health, Education,
15 Labor and Pensions Committee, *For Profit Higher Education: The Failure to Safeguard the Federal*
16 *Investment and Ensure Student Success* 3 (July 30, 2012) (hereafter, “Senate HELP Report”).
17 Accordingly, students at for-profit colleges are far more likely to take out private student loans. A
18 recent report by the Consumer Financial Protection Bureau found that 42% of students attending 2-
19 year for-profit institutions were forced to take out private student loans to cover the cost of their
20 education—versus only 5% of students at public 2-year institutions. Consumer Financial Protection
21 Bureau, *Private Student Loans* 37 (Aug. 29, 2012).

22 56. Nor are for-profit colleges more likely to ensure that students graduate than community
23 colleges or that they graduate more quickly. On the contrary, these colleges have a history of
24 extraordinary student turnover and dropout rates. More than half a million students who enrolled in a
25 for-profit college in 2008-2009 left without a degree or Certificate by mid-2010. Among 2-year
26 Associate degree-seekers, 63 percent of students departed without a degree. Moreover, the “vast
27 majority” of students left with substantial student loan debt that “may follow them throughout their
28

lives, and can create a financial burden that is extremely difficult, and sometimes impossible, to escape.” Senate HELP Report at 2.

57. The for-profit model is not hurt by loss of students, since such schools receive the tuition funds (often covered by student loans) whether or not a student finishes a semester. So long as the school is able to attract a continued flow of students, turnover causes no harm to a for-profit college’s bottom line. Despite the abysmal record of for-profit colleges in achieving true success for their students, the “Student Success” agenda touted by Lumina and others focuses on contracting community colleges and limiting their mission, leaving for-profit colleges free to churn student populations and leave the majority of their students without meaningful educational advancement but nonetheless deeply in debt.

58. Lumina’s dedication to the “Student Success” agenda—with its accompanying significant benefits to for-profit schools and the private student loan industry—is reflected in Lumina’s grant history. In 2010, 58.8 percent of its grants (\$25,654,300) were in the area of so-called “student success.” Cassie Hall and Scott L. Thomas, *“Advocacy Philanthropy” and the Public Policy Agenda: The Role of Modern Foundations in American Higher Education* (April 2012). Lumina defines success as a significant increase in higher education attainment rates—*i.e.*, in the number of students completing post-secondary certificates, associate and baccalaureate degrees and credentials. See “Success” on Lumina Foundation Website, available at http://www.luminafoundation.org/goal_2025/outcomes/success.html (last visited Aug. 17, 2013); “Grants” on Lumina Foundation Website, available at <http://www.luminafoundation.org/grants.html> (last visited Aug. 17, 2013). The flip side of this “Student Success” agenda is the reduction of funding for, and elimination of, programs that serve those less likely to graduate with a degree in the minimum amount of time, such as non degree seeking students, nontraditional students, students who need remedial coursework and students who must work or raise children while attending college.

59. Between 2008 and 2011, Lumina also provided significant financial support to the American Legislative Exchange Council (“ALEC”), a voluntary membership association that “works to advance the fundamental principles of free-market enterprise, limited government, and federalism at

1 the state level.” *About ALEC*, available at <http://www.alec.org/about-alec/> (last visited Aug. 17,
2 2012).

3 60. In addition to Lumina, ALEC has received support from many businesses and
4 foundations including Exxon Mobil, Chevron, Shell, Texaco, Phillip Morris, R.J. Reynolds, the
5 Charles G. Koch Charitable Foundation, the National Rifle Association, Family Research Council and
6 the Heritage Foundation. Among other things, ALEC advocates privatizing public schools (Julie
7 Underwood and Julie F. Mead, *A Smart ALEC Threatens Public Education*, Education Week (Feb. 29,
8 2012)) and withdrawing public support and privatizing the funding of public colleges and universities
9 (ALEC, Ten Questions State Legislators Should Ask About Higher Education 13 (2011)). ALEC’s
10 model legislation promotes private-sector colleges (ALEC Model Legislation: Resolution in Support
11 of Private Sector Colleges and Universities), while decrying the claimed failures of public colleges
12 (ALEC Model Legislation: Resolution Supporting Quality Higher Education¹), and advocating for
13 restrictions on public college funding based on such claimed failures (ALEC Model Legislation: The
14 College Funding Accountability Act). Upon information and belief, at least 139 bills or state budget
15 provisions reflecting ALEC education “model legislation” that promote a private, for-profit education
16 model were introduced in 43 states and the District of Columbia in the first six months of 2013.

17 ***The Fight Over The Student Success Task Force Recommendations***

18 61. In January 2011, the BOG appointed 21 individuals to serve on a Student Success Task
19 Force (“SSTF” or “Task Force”). The Task Force was charged with examining strategies and
20 developing recommendations for promoting student success. It was evident from its inception that the
21 Task Force’s goals and vision were aligned with Lumina’s narrow vision of “student success.” In a
22 press release issued on January 18, 2011, Task Force chair and BOG member Peter MacDougall was
23 quoted as stating that “[t]he only possible way for improving graduation rates is to realign funding
24 priorities to coincide with academic performance. Courses and programs geared toward helping
25 students walk across a stage wearing a cap and gown on graduation day must be our first priority.”
26

27
28 ¹ ALEC’s model legislation is available on its website at [http://www.alec.org/model-](http://www.alec.org/model-legislation/)
legislation/ (last visited Aug. 20, 2013).

1 62. During the second quarter of 2011, Lumina donated \$200,000 to support the work of
2 the Task Force.

3 63. During that same quarter, Lumina also gave (a) \$1.5 million to the Western Association
4 of Schools and Colleges to “transform WASC’s accreditation process to assure clearer standards for
5 graduation rates, levels of learning and degree outcomes using the Degree Profile,” and (b) \$350,000
6 to the Campaign for College Opportunity (“CCO”) —whose advisory board includes three ACCJC
7 members (President Barbara Beno, Vice Chair Commissioner Steve Kinsella and Vice President John
8 Nixon)—to “improve college access and success in California’s community colleges and universities
9 by setting goals and priorities for increased educational attainment and implementation of new student
10 transfer rules among public colleges and universities.” *Lumina Foundation Announces Second-*
11 *Quarter Grants* (Press Release July 25, 2011), available at [http://www.luminafoundation.org/](http://www.luminafoundation.org/newsroom/news_releases/2011-07-25.html)
12 [newsroom/news_releases/2011-07-25.html](http://www.luminafoundation.org/newsroom/news_releases/2011-07-25.html) (last visited Aug. 17, 2013).

13 64. Throughout 2011, the Task Force met monthly to develop its recommendations. In
14 October 2011, the Task Force released draft recommendations that, *inter alia*, would require students
15 receiving BOG fee waivers to meet various conditions and requirements, stripping financially-needy
16 students of the waiver if their grades fall, if they do not have an approved educational goal, or if the
17 student has taken more than 110 units (Draft Rec. 3.2); create a powerful new centralized community
18 college system office in Sacramento (Draft Rec. 7.1); require students to select a specific “program of
19 study”—*i.e.*, a certificate, degree or transfer objective in a specific occupational area or major—by the
20 end of their second term (Draft Rec. 2.5).

21 65. Members of the ACCJC—both directly and through their participation with the CCO—
22 were among the early supporters of the recommendations. The CCO strongly endorsed the draft
23 recommendations in an open letter to California community college stakeholders dated October 25,
24 2011. And, according to the Task Force newsletter from January 2012, ACCJC joined the CCO as an
25 early “key supporter” of the Task Force and its recommendations.

26 66. While the ACCJC, the CCO and other supporters lauded the Task Force for its
27 dedication to improving student success, opponents argued that its real effect would be to frustrate the
28 hopes and dreams of all but the most motivated and prepared students. Many expressed concern with

1 narrowing the focus of California community colleges and the definition of “success,” the viability and
2 reasonableness of the mechanisms that implemented mandatory early educational plans, and the
3 impact the recommendations would have on vulnerable students including poor students, ethnic
4 minorities, people with disabilities and English-language learners. *See generally* Chancellor’s Task
5 Force on Student Success, *Summary of Community Comments* (Dec. 5, 2011).

6 67. Some of the most vocal opposition came from City College stakeholders—including
7 students, faculty, and members of the local Board of Trustees—who believed the recommendations
8 were inconsistent with the institution’s historic open access mission. Below are examples of the
9 concerns communicated by City College stakeholders:

10 (a) On October 5, 2011, the Executive Council of the City College Academic Senate
11 adopted a resolution rejecting the draft recommendations. Official Minutes, City College
12 Academic Senate Executive Council (Oct. 5, 2011).

13 (b) On October 27, City College’s Board of Trustees adopted a resolution rejecting the
14 draft recommendations and urging California Community Colleges to “continue to embrace an
15 open-access, comprehensive model as detailed in California’s internationally-acclaimed Master
16 Plan for Higher Education, to ensure that all California adult populations have equitable access
17 to an affordable, high-quality, public education.”

18 (c) On November 14, City College students and faculty, along with a member of the
19 local Board of Trustees and other elected officials, held a large rally to oppose the Task Force’s
20 recommendations. In a press release about the rally, issued by City College, Board of Trustees
21 President John Rizzo was quoted as saying that “[m]any of the task force recommendations are
22 from the right wing ideology of shrinking government . . . don’t address student needs and
23 accelerate the defunding of education.” Press Release from City College of San Francisco
24 (Nov. 14, 2011). Jeffrey Fang, Student Trustee for City College, was similarly outspoken in
25 his opposition to the recommendations, stating that they “don’t address the real problems, and
26 make it even more difficult for new arrivals to our country to succeed.” *Id.*

27 (d) The December 2011 issue of the *Guardsman* (the City College newspaper) was
28 emblazoned with a large red headline proclaiming: “WE WILL FIGHT.” The *Guardsman*,

1 Vol. 152, Issue 8 (Dec. 6, 2011) at 1, available at [http://issuu.com/theguardsonline/docs/](http://issuu.com/theguardsonline/docs/vol152issue8)
2 vol152issue8 (last visited Aug. 17, 2013). Much of the issue was dedicated to a scathing
3 criticism of the Task Force's recommendations, which the paper claimed "would tear apart the
4 community college system as we know it . . . close off higher education to California's 99
5 percent and slam the door in their faces." *Id.* The paper called on readers to "find your voice,
6 take a stand, and join the California community college system in the most critical battle it has
7 ever faced: the battle for the soul of our education." *Id.*

8 68. On December 12, 2011, the Task Force issued its final report and recommendations,
9 which addressed only a few of the concerns raised by City College and other opponents of the Task
10 Force's recommendations.

11 69. On January 9, 2012, the BOG met to consider the Task Force's recommendations.
12 While more than fifty interested individuals and organizations attended the meeting and addressed the
13 BOG, the meeting was dominated by students and faculty from City College, who voiced fierce
14 opposition to the Task Force's final recommendations. Fourteen City College students testified in
15 opposition, including:

16 • Joseph Fitzgerald—After Joseph's father died when he was ten, his mother went into a deep
17 depression. He was estranged from her at 17 and had to fend for himself by selling cruise
18 tickets on Fisherman's Wharf. He testified that the ability to take classes at City College—and
19 to fail without being punished by loss of fee waivers and financial aid—were vital to his
20 becoming a mature adult. Being able to stray from his educational plan allowed him to take
21 multiple classes that helped him find his passion, journalism. He has now taught over 300
22 students at the San Francisco School of the Arts High School using the technical skills he
23 learned at City College. But because he does not have a degree or a certificate, he would be
24 considered a failure under the Task Force's recommendations.

25 • Shanell Williams—Shanell grew up in San Francisco and was pulled into the juvenile
26 justice and foster care systems. She went straight from the foster care system to City College
27 not knowing her educational goals and not knowing how to be a student. She was not able to
28 commit to college full time because she had to work to support herself and her family. It has

1 taken her over two years to get enough credits to apply to transfer to a four-year college.

2 Shanell expressed strong opposition to the Task Force recommendations and frustration with
3 the process, testifying that the recommendations make disenfranchised students pay for the
4 economic crisis.

5 • Stephen Georgiou—Stephen has a theater degree from Northwestern University, but when
6 he moved to San Francisco, he did not know what he wanted to do with his career. He began
7 taking classes at City College and has found it to be an amazing experience. Stephen testified
8 that recommendations as a whole “missed the mark” on the role and value of education in our
9 society.

10 70. Ten faculty members from City College also spoke in strong opposition to the Task
11 Force’s recommendations, including:

12 • Karen Saginore, President of the Academic Senate, who stated that an examination of the
13 unintended results coming out of these recommendations was necessary. For example, the
14 recommendations would result in the poorest students being held to different standards than
15 other students, and would encourage part time students to take out large loans and attend
16 school full time with no guarantee that they would ever be able to repay those loans.

17 • Daniel Halford pointed out that City College serves many different needs for all types of
18 adults, from all backgrounds and levels of education, enabling them to succeed in many
19 different ways. The Task Force recommendations limit success to a very narrow definition
20 based on certificates, degrees and transfers.

21 • Shelly Glazer, who teaches in the older adults program, testified that the program gives her
22 students an opportunity to learn with peers in an environment that challenges their mind and
23 opens their lives to new possibilities. The classes offered are not bingo—they are classes that
24 help older adults live full and enriched lives. For example, she teaches classes like the chronic
25 disease self management course developed by Stanford, which has been shown to save money
26 in the health care system, and college level writing classes.

27 71. Over the strong objections of these speakers, the BOG voted to adopt the Task Force’s
28 recommendations.

1 72. On February 1, 2012 the California State Senate Education and State Assembly Higher
2 Education committees held a joint informational hearing to review the Task Force recommendations.
3 Once again, City College students and faculty appeared to speak out in opposition to the
4 recommendations. The ACCJC and CCO, meanwhile, continued to voice support for the
5 recommendations. *See* Task Force Newsletter (Feb. 2012).

6 ***City College's Successful Advocacy In The Fight Over S.B. 1456***

7 73. Although many of the Task Force recommendations could be implemented by the BOG
8 through regulatory changes, six required legislative action. Accordingly, on February 24, 2012,
9 Senator Lowenthal introduced S.B. 1456, the Seymour-Campbell Student Success Act of 2012, to
10 implement several of the Task Force recommendations.

11 74. As introduced, S.B. 1456 included several Task Force recommendations that City
12 College and other open access advocates found highly objectionable. For instance, the bill established
13 new requirements to be met by low-income students in order to receive a BOG Fee Waiver—
14 restricting eligibility to those who (1) identify, upon enrollment, a specific degree, certificate transfer
15 or career advancement goal; (2) meet academic and progress standards to be set by the BOG; and (3)
16 have not exceeded a “maximum unit cap.” In addition, the bill required any college or district
17 receiving funds under the Act to provide specified orientation, assessment and counseling services—
18 but failed to provide any additional money to fund these services.

19 75. City College students and faculty quickly rallied against S.B. 1456. For example, the
20 February 2012 issue of the Guardsman urged students, faculty and interested citizens to voice their
21 opposition in upcoming legislative sessions (*see* Joe Fitzgerald, Editor's Note: Next Phase For Task
22 Force Recommendations – Write Them Into Law (Feb. 10, 2012), available at <http://theguardman.com/editors-note-next-phase-for-task-force-recommendations-write-them-into-law/>), and on March
23 14, 2012, the City College Associated Student Council, Ocean Campus, unanimously passed a
24 resolution to oppose the Student Success Act (*see* Minutes of the March 14, 2012 Associated Student
25 Council Regular Meeting, available at [https://www.ccsf.edu/NEW/content/dam/ccsf/documents/](https://www.ccsf.edu/NEW/content/dam/ccsf/documents/Student_Activities/minutes/2011-2012/ASCMinutes031412.pdf)
26 [Student_Activities/minutes/2011-2012/ASCMinutes031412.pdf](https://www.ccsf.edu/NEW/content/dam/ccsf/documents/Student_Activities/minutes/2011-2012/ASCMinutes031412.pdf)).
27
28

1 76. The ACCJC, however, rallied behind the controversial bill. On April 9, 2012, ACCJC
2 President Barbara Beno wrote letters on behalf of the ACCJC to members of the Senate Education
3 Committee strongly urging them to support the bill. Moreover, a Bill Analysis prepared in advance of
4 an April 18, 2012 Senate Education Committee hearing on S.B. 1456 identified the ACCJC (and the
5 CCO) as official supporters of the bill.

6 77. At the April 18, 2012 hearing, Senator Lowenthal agreed to make several amendments
7 based on feedback provided by City College and others. Most critically, Senator Lowenthal agreed to
8 delete the maximum unit cap on BOG fee waivers and to eliminate the requirement that students
9 identify a specific degree, certificate transfer or career advancement goal upon enrollment. Although
10 these amendments made the bill significantly more palatable to open access advocates like City
11 College, former California Community Colleges Chancellor Jack Scott—who testified in support of
12 S.B. 1456—acknowledged that the bill remained “controversial.”

13 78. The controversy was reflected in the many dozens of comments provided at the
14 hearing. Among those who spoke against the bill were Leslie Smith, Associate Vice-Chancellor of
15 Governmental Relations for City College, who informed the Committee that the City College Shared
16 Governance group had voted unanimously to oppose the bill. Ms. Smith emphasized that City College
17 is deeply committed to open access for all students and that the BOG Fee Waiver restrictions
18 remaining in S.B. 1456 would prevent students who struggle academically from achieving success.

19 79. Neither City College’s vocal opposition nor ACCJC’s vocal support for S.B. 1456
20 waned after the April 18, 2012 hearing. If anything, the battle intensified.

21 80. In May 2012, City College students organized a conference entitled “Keep Community
22 in Community College.” In an open letter inviting California community college stakeholders to the
23 conference, the City College Associated Student Council referred to S.B. 1456 as “the most brazen
24 assault on access to our system in history,” decried the “rationing of education” inherent in the bill and
25 called on everyone in the community to attend the conference to discuss the “privatization of higher
26 education,” and to plan next steps to fight against S.B. 1456 and the Task Force recommendations.

27 81. On May 24, the SFCCD Board of Trustees passed a resolution opposing S.B. 1456. In
28 that resolution, the Board declared that City College “wants to continue to be able to serve all adults

1 who need a college education” and that S.B. 1456 would hinder its ability to do so. The Board of
2 Trustees also stated that “a student’s income should not determine whether they can attend [college],”
3 and that “students who come from economically or educationally disadvantaged backgrounds should
4 [not] be denied financial aid or put at the end of the enrollment priority list because they need more
5 help in order to be successful.”

6 82. On the other side of the aisle, the ACCJC continued its activities in support of the bill.
7 On June 13, 2012, Barbara Beno sent a letter to members of the State Assembly expressing the
8 ACCJC’s “strong support” for S.B. 1456 and urging them to support the bill when it came before them
9 in the Assembly Higher Education Committee.

10 83. Over the following two months, S.B. 1456 was amended four more times. The June 26,
11 2012 amendments were particularly notable as they incorporated language from A.B. 1741 (Fong),
12 also known as the California Community Colleges Student Success Infrastructure and Support
13 Program Act of 2012. A.B. 1741—which was *supported* by the SFCCD Board of Trustees (*see*
14 *Minutes SFCCD Board of Trustees Regular Meeting (Apr. 26, 2012)*) and *opposed* by the BOG Task
15 Force—would have obligated the Chancellor’s Office to annually evaluate and seek funding for such
16 fundamental components of student success as increasing the counsellor to student ratio, increasing the
17 full-time to part-time faculty ratio, restoring funding for student service programs, and supporting part-
18 time faculty. A.B. 1741 was dropped as a stand-alone proposal following its incorporation into S.B.
19 1456.

20 84. Other important amendments were inserted on August 22, 2012. These changes placed
21 reasonable restrictions on the implementation of the new academic progress standards for BOG Fee
22 Waivers, emphasizing the need for districts to have essential support services in place before they
23 could start restricting student aid, and the need to ensure that financially needy students were not
24 unfairly disadvantaged. Although some of these restrictions were removed two days later in the final
25 amendment to the bill, the final version of S.B. 1456—which was signed by the Governor on
26 September 27, 2012—was viewed by its opponents as a vast improvement over the initially introduced
27 bill.
28

**ACCJC Evaluates City College In The Midst Of This Heated Fight And
Sanctions City College In Retaliation For Embracing And Advocating
A Different Vision For California's Community Colleges Than The ACCJC Itself**

85. In the midst of the heated public debate discussed above in which the ACCJC and City College were on opposite sides, ACCJC was in the process of evaluating City College for reaffirmation of its accreditation.

86. By evaluating City College while embroiled in a public political fight over the proper mission, vision and role of community colleges in California, and in specific ways detailed below, ACCJC violated both its own conflict of interest policy—which defines a conflict to include “any personal or professional connections that would create either a conflict or the appearance of a conflict of interest,” and requires all representatives of the ACCJC to “make every effort to avoid the appearance of conflict of interest, in both formal and informal interactions with members of the field and with the public”—as well as California’s Unfair Competition Law, Business and Professions Code Section 17200 *et seq.*, which prohibits unfair, unlawful and fraudulent business acts and practices.

ACCJC Puts City College On “Show Cause”

87. In or around December 2011 or January 2012—when City College students, faculty and trustees were using all of the means at their disposal to advocate against adoption of the Task Force recommendations that the ACCJC supported (*see* ¶¶ 65-70, *supra*)—the ACCJC staff selected the individuals who would serve on City College’s external Evaluation Team. The seventeen member team, which was comprised mainly of administrators with very few professors, included:

- (a) three individuals from colleges that were represented on the 21-member Task Force;
- (b) seven individuals from three community college districts that publicly supported the Task Force recommendations and/or S.B. 1456; and
- (c) ACCJC President Barbara Beno’s husband, Peter Crabtree.

88. In spring of 2012, while the debate over S.B. 1456 was raging in the Legislature and the public (*see* ¶¶ 73-80, *supra*), the ACCJC Evaluation Team conducted a site visit at City College and prepared an Evaluation Report. The Evaluation Report concluded that City College was only partially

1 compliant with several accreditation standards and made fourteen recommendations that, if
2 implemented, would help City College come into compliance.

3 89. Around the same time the Evaluation Team was preparing its report, Lumina awarded a
4 \$450,000 grant to the ACCJC to “explore the usefulness of the Degree Qualifications Profile (DQP)
5 as: 1) a tool for facilitating Tuning² in several disciplines to improve associate degree completion
6 and student transfer, and 2) a method of increasing institutional effectiveness through internal review.”
7 Lumina Foundation Grant Information, available at [http://www.luminafoundation.org/luminagrants/
8 accrediting_commission_for_community_and_junior_colleges_novato_ca/](http://www.luminafoundation.org/luminagrants/accrediting_commission_for_community_and_junior_colleges_novato_ca/) (last visited Aug. 17,
9 2013).

10 90. On or around June 6, 2012—*i.e.*, two weeks after the SFCCD adopted a resolution
11 vehemently opposing S.B. 1456 (*see* ¶81, *supra*), and one week before Barbara Beno sent letters to
12 several to State Assembly Members strongly supporting the bill (*see* ¶82, *supra*)—the ACCJC voted
13 in a closed session to impose a “Show Cause” sanction on City College.

14 91. City College was notified of the determination in a letter from Barbara Beno to City
15 College’s interim Chancellor dated July 2, 2012. The letter stated that City College was required to
16 show cause why its accreditation should not be withdrawn by the Commission at the Commission’s
17 next meeting, scheduled to occur in June 2013. Specifically, City College was required to submit a
18 “Show Cause Report” by March 15, 2013, to be followed by a visit of Commission representatives
19 shortly thereafter.

20 ***ACCJC Votes To Terminate City College’s Accreditation***

21 92. On March 15, 2013—just eight months after receiving the Show Cause determination
22 letter from the ACCJC—City College submitted the required Show Cause Report. That same month,
23 the ACCJC assembled a nine-member Show Cause Visiting Team (comprised of eight administrators
24 and only one professor) that visited City College on April 4 and 5, 2013.

25
26
27 ² “Tuning”—a Lumina initiative—is process to identify what a student should know and be
28 able to do in a chosen discipline when an associate’s, bachelor’s or master’s degree has been earned.
See “Tuning” on Lumina Foundation Website, available at [http://www.luminafoundation.org/tag/
tuning/](http://www.luminafoundation.org/tag/tuning/) (last visited Aug. 17, 2013).

1 93. Five of the nine members of the Show Cause Visiting Team had been members of the
2 original Evaluation Team. All but one of those five—and two of the newly added members—were
3 affiliated with colleges or community college districts that had publicly supported the Task Force
4 recommendations and/or S.B. 1456, both of which, again, the ACCJC had favored and City College
5 had opposed. And one of the newly added members, John Nixon, was (1) Vice President of the
6 ACCJC, (2) the retired President/CEO of a college with a trustee on the Task Force, and (3) a member
7 of the CCO Advisory Board (see ¶63, *supra*).

8 94. On or around June 7, 2013, the ACCJC voted in a closed session to terminate City
9 College's accreditation effective July 31, 2014. *See* Letter from Barbara A. Beno, President, ACCJC,
10 to Dr. Thelma Scott-Skillman, Interim Chancellor, City College of San Francisco (July 3, 2013)
11 (hereafter "Termination Decision Letter").

12 95. City College was notified of the ACCJC's decision to terminate its accreditation in a
13 letter dated July 3, 2013.

14 96. Loss of accreditation would be a death blow to City College. The College, which
15 would become ineligible for state and federal funds, would likely be forced to close—cutting off tens
16 of thousands of students' only viable option for higher education or vocational training. Indeed, just
17 the threat of loss of accreditation has had immediate and potentially long lasting adverse
18 consequences. Enrollment at City College has plunged since the accreditation crisis began.
19 Enrollment dropped 15% between the 2011/2012 and 2012/2013 school year and enrollment for the
20 fall 2013 semester is at an all time low—down 10.2% compared to the fall 2012 semester. Since state
21 funding is dependent on the number of students enrolled, unless City College can stop the downward
22 spiral, it will soon face a dramatic decrease in funding from which it may never fully recover.

23 ***Evidence of ACCJC's Retaliatory Motivation***

24 97. The ACCJC retaliated against City College by placing the College on Show Cause
25 sanction and ultimately voting to terminate City College's accreditation because City College
26 embraced an "open access" vision for community colleges that differed from the vision supported by
27 ACCJC and for opposed policies and legislation championed by the ACCJC.
28

1 98. Evidence that the ACCJC took action against City College in retaliation for its opinions
2 and advocacy includes the following.

3 99. Both the 2012 Evaluation Report and the July 2, 2012 Show Cause decision letter
4 repeatedly questioned City College's open access mission, suggesting that City College was being
5 sanctioned because it failed to narrow its mission and become the kind of limited service public
6 college that the ACCJC and its funders prefer.

7 100. Among the findings in the Evaluation Report was an allegation that the "college has not
8 demonstrated the will to reexamine the scope of the college's mission and supporting operations to
9 decide the scope or level of programs and services that can be provided within the limits of its actual
10 financial resources. . . . [T]here is no process to reduce the scope of programs and services provided
11 across the service area based on a reduction in funding Unless the scope of the mission is adjusted
12 or the college finds an additional stable funding source, it is unlikely the college can continue
13 programs at its current level." Evaluation Report at 55.

14 101. The July 2, 2012 Show Cause decision letter noted that "the funding base for City
15 College appears to be inadequate to support the mission of the college as it is currently conceived" and
16 that "the college has not demonstrated . . . adequate attention to the impact on quality as the resources
17 have declined while the broad breadth of its mission has been maintained." July 2, 2012 Show Cause
18 Letter at 2.

19 102. Moreover, the ACCJC's decision to put City College on Show Cause was unusual and
20 suspicious given City College's success as an educational institution and the fact that the College had
21 never been placed on any sanction in the past.

22 103. City College's success as an educational institution is evident from several objective
23 metrics. For example:

24 (a) City College's remedial progress rate in English as a Second Language ("ESL")
25 education is 52.3%, which is more than double the ESL remedial progress rate of California
26 community colleges as a whole (23.6%)—making City College a particularly valuable (and
27 effective) resource for underrepresented and immigrant students seeking to improve their
28 language skills. *Compare* 2013 City College of San Francisco Student Success Scorecard,

1 available at http://scorecard.cccco.edu/reports/OneYear/361_OneYear.pdf (last visited Aug.
2 17, 2013) with 2013 Statewide Student Success Scorecard, available at [http://scorecard.cccco.
3 edu/reports/OneYear/000_OneYear.pdf](http://scorecard.cccco.edu/reports/OneYear/000_OneYear.pdf) (last visited Aug. 17, 2013).

4 (b) City College has a completion rate of 55.6%, which is significantly higher than the
5 average completion rate of community colleges statewide of 49.2%. *Id.*

6 (c) City College has a significantly higher overall persistence rate (75.2%) than the
7 statewide system (65.8%). The persistence rate measures the percentage of students who take
8 certain coursework and enroll in three consecutive primary semester terms anywhere in the
9 California community college system. California Community College Academic Performance
10 Reports 2011-2012, available at [http://www.asd.calstate.edu/performance/ccc/ccc1112/index.
11 html](http://www.asd.calstate.edu/performance/ccc/ccc1112/index.html) (last visited Aug. 17, 2013). City College's rate suggests that its students, on the whole,
12 consistently take courses for continuous semesters and rely on the education City College
13 provides.

14 (d) City College students who transferred to California State Universities had a higher
15 average GPA at Cal State (3.08, as compared to 3.03) during the Fall 2011 semester than
16 students from other community colleges, demonstrating that City College more than
17 adequately prepares its students for the intellectual rigors of four-year institutions. *Id.*

18 104. Given City College's educational successes it is unsurprising that it has never been
19 sanctioned before. What is surprising is the fact that the ACCJC, after reaccrediting City College fully
20 in 2006, jumped straight to the harshest sanction available in 2012.

21 105. There are three levels of sanctions that the ACCJC may impose: Warning, Probation
22 and Show Cause. ACCJC has acknowledged that it is "not common" for an institution to be put on
23 Show Cause without ever having received a lesser sanction. ACCJC, *Additional Information
24 Pertaining to Executive Committee Report of the CFT Complaint 3*, available at
25 http://www.accjc.org/wp-content/uploads/2013/07/Additional_Information_on_CFT_Complaint.pdf
26 (last visited Aug. 17, 2013).

27 106. Indeed, it is virtually unprecedented. Every single one of the six California institutions
28 placed on Show Cause sanction by the ACCJC since 2008 had been previously sanctioned—some

1 multiple times over several years. Cuesta College, for example, was placed on Show Cause status in
2 January 2012. The College had been on Warning or Probation for three and a half years of the
3 previous four years. College of the Redwoods was on Warning from January 2006 through June 2007,
4 on Probation from June 2007 through June 2008, back on Warning from June 2008 through January
5 2009 and from June 2009 through January 2010, before the college was ultimately placed on Show
6 Cause status in January 2012.

7 107. Also suspect was the ACCJC's assertion in the July 2, 2012 Show Cause decision letter
8 that one basis for the Show Cause sanction was City College's failure to adequately address
9 recommendations made by the ACCJC following City College's last comprehensive evaluation in
10 2006. The ACCJC has recently explained that it makes two types of recommendations: "to meet [an
11 accreditation] standard" or simply to "increase institutional effectiveness." ACCJC, *Additional*
12 *Information Pertaining to Executive Committee Report on the CFT Complaint* at 3, available at
13 http://www.accjc.org/wp-content/uploads/2013/07/Additional_Information_on_CFT_Complaint.pdf
14 (last visited Aug. 17, 2013). Given that the ACCJC had reaffirmed City College's accreditation in
15 2006 without imposing any sanction—and the federal requirement that accreditation agencies provide
16 institutions with a detailed written report clearly identifying any deficiencies in the institution's
17 compliance with agency standards—the 2006 recommendations could only have been understood to
18 represent areas for improvement, not areas of non-compliance. In imposing Show Cause, however,
19 the ACCJC re-characterized the recommendations—treating them as reflecting areas of non-
20 compliance that City College had failed to remedy. It did so despite having reviewed and accepted
21 City College's interim reports in 2007, 2009 and 2010, and taking no action based on supposed non-
22 compliance with those recommendations at any time between 2006 and 2012.

23 108. The circumstances surrounding the ACCJC's ultimate decision to terminate City
24 College's accreditation effective July 2014 are even more illustrative of ACCJC's improper
25 motivation and bias.

*Unexplained Differences Between The Show Cause Evaluation Report And
The ACCJC's Termination Decision Letter*

109. Although the Show Cause Visiting Team's report (called the "Show Cause Evaluation Report") found that City College had not completely addressed all fourteen recommendations made by the 2012 Evaluation Team or come into full compliance with all accreditation standards, it also made clear that City College had made enormous progress and was on track to resolve many of the outstanding issues in the near future. The report concluded that City College had fully addressed four of the recommendations (recommendations 3, 4, 6 and 9) and had "partially addressed" the other ten. For example:

(a) Recommendation 1 (Mission Statement) was to set a process and timeline to regularly review and revise the college's mission statement and to use the mission statement to set institutional priorities and goals. The Show Cause Evaluation Report found that a timeline for review had been established and that the college was "using the mission statement as the benchmark to determine institutional priorities and goals." Show Cause Evaluation Report: City College of San Francisco (2013) at 66. The Show Cause Evaluation Report concluded that Recommendation 1 had been partially addressed and was expected to be fully addressed by the end of summer 2013. *Id.*

(b) Recommendation 5 (Student Support Services) was to assess student support services to improve the effectiveness of the services, and to develop and communicate plans for the delivery of such services that support student learning and achievement. The Show Cause Evaluation Report found that City College had made "significant progress" despite resource constraints, and noted that "Student Support Services has completed its plan for reorganization and the premises for implementing a one-stop support service model on the Ocean Campus and each of the centers, as well as embellish its web site." *Id.* at 69-70.

(c) Recommendation 8 (Physical Resources) was to calculate all of the costs required to maintain City College's facilities and include those numbers in the annual long term planning and budgeting processes. The Show Cause Evaluation Report found that City College had assembled a workgroup to do this, and that the workgroup had developed a comprehensive total cost of ownership ("TCO") model. The Report concluded that the

1 recommendation was only partially satisfied, however, because “[t]he TCO model remains a
2 work in progress as the college continues to collect and sort data by center and major locations
3 to better understand the total costs associated with operating each site.” *Id.* at 72.

4 (d) Recommendation 13 (Governance Structures) was for college leaders to evaluate
5 and improve the college’s governance structure. The Show Cause Evaluation Report found
6 that City College had evaluated and significantly revised its longstanding governance structure.
7 City College had initiated implementation of the new structure in January 2013. Although the
8 Report noted that implementation was still a “work in progress,” it noted (a) that the
9 “evaluation and development processes . . . were inclusive, reflecting broad engagement
10 among all constituencies,” (b) that the “revised structures clearly define and promote
11 participation in governance for all employee groups and students, (c) that City College’s self-
12 report presented a detailed Actionable Improvement Plan that specified planned steps for
13 implementation, and (d) that all constituencies were “sincerely engaged in implementation of
14 the governance structure and [were] working collaboratively to improve decision making.” *Id.*
15 at 76.

16 110. Overall, the visiting team was “impressed with the engagement and responsiveness of
17 the entire college community to take corrective measures to meet the ACCJC Accreditation Standards
18 and Eligibility Requirements in response to the Commission directives in its July [2], 2012
19 accreditation decision letter.” *Id.* at 9.

20 111. Strangely, in direct contradiction to the Show Cause Visiting Team’s conclusion that
21 four recommendations had been fully met and ten had been partially met, the ACCJC concluded that
22 only *two* of the recommendations had been fully met and only *one* had been partially met. *Compare*
23 Show Cause Evaluation Report at 66-77 with Termination Decision Letter at 3. The ACCJC offered
24 no explanation for the basis of its disagreement with its own Visiting Team’s assessment.

25 112. The ACCJC also found City College to be out of compliance with nine accreditation
26 standards that the Show Cause Visiting Team had found to be satisfied.

27 113. For example, Standard I.B.2 states:
28

1 The institution sets goals to improve its effectiveness consistent with its stated
2 purposes. The institution articulates its goals and states the objectives derived
3 from them in measurable terms so that the degree to which they are achieved
4 can be determined and widely discussed. The institutional members understand
5 these goals and work collaboratively toward their achievement.

6 114. The Show Cause Visiting Team reported that City College had developed a revised
7 planning process that resulted in “measurable goals and objectives stated in measurable terms.” Show
8 Cause Evaluation Report at 12. The Show Cause Evaluation Report carefully catalogued the strengths
9 of the revised planning process, ultimately noting that the “revised program review system has
10 strengthened the ability of the college to use both qualitative and quantitative data, as is evident from
11 the quality of the program reviews and the use of those reviews to develop prioritized lists of resource
12 requests. Conclusion: The college meets the standard.”

13 115. Nonetheless, and without any explanation of its decision or evidence to support its
14 conclusion, the ACCJC determined that City College failed to meet Standard I.B.2. Termination
15 Decision Letter at 2.

16 *Differences In ACCJC’s Treatment Of City College And Other Colleges On Show Cause*

17 116. In the past five years, six California colleges have been placed on Show Cause sanction
18 by the ACCJC. Several of those schools had neither resolved all noted deficiencies nor fully
19 addressed all recommendations when a show cause visiting team came to assess their progress.
20 Nonetheless, not one of those schools had their accreditation terminated.

21 117. To the contrary, if there was evidence that progress had been made, even those schools
22 that were found to still have significant deficiencies were *removed* from Show Cause and placed on
23 lower sanction, giving them more time to fully resolve the remaining issues.

24 118. For example, the spring 2009 show cause evaluation report for Solano Community
25 College concluded that the institution still failed to meet two eligibility requirements, had not resolved
26 deficiencies in numerous accreditation standards and had not fully addressed five out of the six
27 recommendations made to the college. Nonetheless, noting that “significant steps” had been taken to
28 address the outstanding issues, the ACCJC voted to remove the college from Show Cause, place it on
Probation and give it another full year to address the remaining deficiencies.

1 119. An even more striking example is Diablo Valley College (“DVC”). In June 2008, DVC
2 was put on Warning by the ACCJC. Later that year, in October 2008, an evaluation team visited DVC
3 and generated an evaluation report. The report found that DVC had failed to address four out of the
4 five recommendations made by previous evaluation teams and was not compliant with two eligibility
5 requirements and several accreditation standards. The report made eleven recommendations to enable
6 DVC to “meet Commission Standards.” In January 2009, the ACCJC voted to put DVC on Show
7 Cause. Notably, however, the ACCJC only required DVC to demonstrate compliance with the two
8 eligibility standards and six of the eleven recommendations by January 2010 in order to avoid
9 termination of its accreditation. DVC was informed that if accreditation was continued after January
10 2010, the Commission would set additional deadlines for the college to fully resolve the other five
11 recommendations—*i.e.*, recommendations 4, 5, 9, 10 and 11—and related deficiencies.

12 120. In November 2009, a visiting team conducted a site visit at DVC to determine whether
13 the deficiencies identified by the fall 2008 evaluation team had been addressed. The show cause
14 evaluation report generated after that visit found that although progress had been made on the six
15 recommendations, only one of the six had been fully satisfied. The team did not even consider DVC’s
16 actions or progress with respect to recommendations 4, 5, 9, 10 or 11. Nonetheless, in January 2010,
17 the ACCJC voted to remove the college from Show Cause and place it on Probation. DVC was given
18 another year to address the five unresolved first-round recommendations and two years to demonstrate
19 resolution of recommendations 9, 10 and 11 (no mention was even made about recommendations 4
20 and 5).

21 121. City College, however, was given no such leeway. Despite the Show Cause Visiting
22 Team’s conclusion that City College had made enormous progress and was on track to resolve many
23 of the outstanding issues the ACCJC had identified, the ACCJC—in stark contrast to its usual practice
24 in recent years—voted to terminate City College’s accreditation without giving it any more time to
25 finish the hard work it was on its way to completing.

**The U.S. Department of Education Concludes That
The ACCJC Is In Violation Of Federal Law**

122. In April 2013, the California Federation of Teachers, along with other interested parties, filed a third party comment and complaint with the United States Department of Education (“DOE”) raising multiple concerns with the policies and practices of the ACCJC, both in general and as specifically related to the evaluation and sanction of City College.

123. The DOE requested and received a response from the ACCJC in July 2013.

124. On August 13, 2013, the Director of the Accreditation Group in the DOE’s Office of Postsecondary Education sent a letter to the ACCJC stating that several aspects of the ACCJC’s accreditation review process are not in compliance with the Secretary’s Criteria for Recognition—the federal regulations governing accrediting agencies. *See* Letter from Kay W. Gilcher, Director, Accreditation Group of U.S. Dep’t of Educ., to Barbara A. Beno, President, ACCJC (Aug. 13, 2013) (attached hereto as Exhibit A).

125. As relevant here, the DOE first found that ACCJC was not in compliance with 34 C.F.R. section 602.13(a)(3), which requires accrediting agencies to have academic as well as administrative personnel on its evaluation, policy and decision-making bodies. The DOE explained that this “criterion expects a good faith effort by the agency to have both academic and administrative personnel reasonably represented,” and that “[o]ne academician on an evaluation team comprised of eight and sixteen individuals, as was the case for the April 2013 and March 2012 evaluation teams, respectively, of CCSF, is not reasonable representation.” *Id.* at 2.

126. The DOE also addressed the appointment of Barbara Beno’s husband to serve on the 2012 Evaluation Team. The letter explained that C.F.R. section 602.13(a)(6) “requires not just clear and effective controls against conflicts of interest, but also against the appearance of conflicts of interest,” that “[t]he appearance of a conflict of interest is present if there is a potential for the personal interests of an individual to clash with fiduciary duties,” and that “[p]ersonal interest includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favors for family and friends.” *Id.* at 2-3. The DOE found that “the participation of the spouse of the president of the ACCJC on an evaluation team has the appearance to the public of creating a conflict

1 of interest.” *Id.* at 3. Accordingly, the DOE concluded that the ACCJC lacks “clear and effective
2 controls against conflicts of interest, or the appearance of conflicts of interest, as required.” *Id.*

3 127. In addition, the DOE concluded that ACCJC is out of compliance with 34. C.F.R.
4 section 602.18(e), which requires that accrediting agencies provide institutions with detailed written
5 reports that clearly identify any deficiencies in the institution’s compliance with accreditation
6 standards. *Id.* at 3-4. The letter noted that ACCJC purports to have two types of recommendations:
7 those intended to bring an institution into compliance with a standard and those intended to increase
8 institutional effectiveness with respect to a standard that is already met. “What is not clear,” the DOE
9 found, “is how the recommendations are differentiated between those two types and how an
10 institution, an evaluation team, the Commission, or the public is to know the difference.” *Id.* at 3. The
11 DOE ultimately concluded that the ACCJC’s failure to clearly identify whether a recommendation
12 indicates noncompliance with standards or just areas for improvement violates federal requirements
13 and “impacts the agency’s ability to provide institutions with adequate due process.” *Id.*

14 128. The DOE ordered the ACCJC to take immediate steps to correct the areas of non-
15 compliance identified in the letter. *Id.* at 5. However, despite having found several significant defects
16 in the ACCJC’s evaluation of City College, the DOE could not provide any relief to City College. As
17 a DOE spokesperson recently explained to a reporter from KQED, the DOE “does not have the
18 authority to reverse any decision made by an accrediting agency.” See Charla Bear and Jon Brooks,
19 *Dept. of Education Ruling Won’t Solve CCSF Accreditation Woes* (Aug. 14, 2013), available at
20 <http://blogs.kqed.org/newsfix/2013/08/13/106731/city-college-ccsf-accreditation> (last visited Aug. 17,
21 2013).

22 **The State Joint Legislative Audit Committee Votes To Audit The ACCJC**

23 129. On August 21, 2013, the bipartisan Joint Legislative Audit Committee (“JLAC”)
24 considered a request by state Senator Jim Beall to audit the practices of the ACCJC.

25 130. Senator Beall said in a statement that the audit was necessary because the ACCJC
26 “virtually operates unfettered with little to no oversight, yet its decisions have a direct impact on the
27 world’s biggest system of higher education with over 2 million students.”
28

1 131. At the JLAC hearing, State Senator Jim Nielsen, who joined Senator Beall in the audit
2 request, stated the following about the ACCJC and its leadership:

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

7 132. At the end of the hearing—after hearing testimony from Senators, Assemblymembers,
8 faculty organizations and ACCJC representatives—the Committee members voted to approve the
9 request for an audit of the ACCJC. The move had strong bipartisan support, with a final vote count of
10 yes, 3 absent or abstaining, and only 1 no vote.

11 **CAUSE OF ACTION**
12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
13 **AGAINST ALL DEFENDANTS**

14 133. The PEOPLE incorporate by reference paragraphs 1 through 128 inclusive.

15 134. California Business and Professions Code Section 17200 prohibits any “unlawful,
16 unfair or fraudulent business act or practices.” The ACCJC has engaged in unlawful, unfair and/or
17 fraudulent business acts and practices in violation of Section 17200. Such acts and practices include,
18 but are not limited to, the following:

- 19 a. ACCJC engaged in unlawful, unfair and/or fraudulent business acts or practices, and
20 violated its own conflict of interest policy by:
- 21 i. evaluating City College while embroiled in a public political fight over the proper
22 mission, vision and role of community colleges in California;
 - 23 ii. appointing President Barbara Beno’s husband to serve on the 2012 Evaluation Team;
24 and
 - 25 iii. filling the majority of positions on the 2012 Evaluation Team and 2013 Show Cause
26 Visiting Team with individuals affiliated with districts and organizations that
27 supported the SSTF recommendation and/or S.B. 1456 and shared the ACCJC’s
28 vision of the role of community colleges.

- 1 b. ACCJC violated 34 C.F.R. section 602.15(a)(3) by failing to ensure that academic
2 personnel were reasonably represented on CCSF's 2012 Evaluation Team and the 2013
3 Show Cause Visiting Team.
- 4 c. ACCJC violated 34 C.F.R. section 602.15(a)(6) by failing to have clear and effective
5 controls against conflicts of interest and the appearance of conflicts of interest and by
6 appointing President Barbara Beno's husband to serve on CCSF's 2012 Evaluation Team.
- 7 d. ACCJC violated 34 C.F.R. section 602.18(e) by failing to inform institutions, including
8 CCSF, whether recommendations made by the Commission indicate noncompliance with
9 an accreditation standard or an area for improvement.
- 10 e. ACCJC sanctioned City College and voted to terminate City College's accreditation in
11 retaliation against City College because City College embraced and publicly supported an
12 "open access" vision for community colleges that differed from the vision supported by
13 ACCJC and because City College actively opposed policies and legislation championed by
14 the ACCJC.
- 15 f. ACCJC violated 20 U.S.C. section 1099b(a)(4)(A) and 34 C.F.R. section 602.18 by
16 applying and enforcing accreditation standards in a manner that subverted, rather than
17 respected, the broad open access mission set forth in California legislative declarations and
18 embraced by City College.

19 135. ACCJC's practices, as set forth in this complaint, constitute unfair business practices
20 because they offend established public policy and cause harm that greatly outweighs any benefits
21 associated with those practices.

22 PRAYER FOR RELIEF

23 The PEOPLE pray that the Court:

- 24 1. Order the ACCJC to vacate the improper Show Cause and Termination decisions
25 against City College;
- 26 2. Enjoin the ACCJC from engaging in accreditation evaluations of any of California's
27 112 community colleges in a manner that violates applicable federal or state law;
28

- 1 3. Order the ACCJC to pay \$2,500 in civil penalties for each unlawful or unfair act,
2 pursuant to Business and Professions Code Section 17206;
3 4. Order the ACCJC to pay the costs of suit; and
4 5. Provide such further and additional relief as the Court deems proper.
5

6 Dated: August 22, 2013
7

8 DENNIS J. HERRERA
9 City Attorney
10 THERESE M. STEWART
11 Chief Deputy City Attorney
12 OWEN CLEMENTS
13 YVONNE R. MERE
14 THOMAS S. LAKRITZ
15 SARA J. EISENBERG
16 Deputy City Attorneys

17 By: 
18

19 SARA J. EISENBERG
20

21 Attorneys for Plaintiff
22 PEOPLE OF THE STATE OF CALIFORNIA
23
24
25
26
27
28

EXHIBIT A



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

August 13, 2013

Barbara A. Beno, Ph.D.
President
Western Association of Schools and Colleges,
Accrediting Commission for Community and Junior Colleges
10 Commercial Boulevard, Suite 204
Novato, California 94949

Dear Dr. Beno:

As you are aware, the Accreditation Group in the Office of Postsecondary Education (Accreditation Group or Department) received a complaint from the California Federation of Teachers (CFT), as well as other interested parties, about the Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (ACCJC, the Commission or the agency). In addition to that complaint, the Accreditation Group also received complaints from other interested parties¹, which included similar concerns. The Department has concluded its review of those complaints.

As a part of its evaluation, the Department reviewed the allegations raised in the complaints of the CFT and the others for applicability to the Secretary's Criteria for Recognition and requested that your agency respond to the allegations regarding your agency's accreditation review process and decision concerning City College of San Francisco (CCSF or the institution). The agency provided a written response and also directed the Department to review information and materials already submitted in the agency's petition for recognition. The Department then reviewed all of the documentation for demonstrated compliance with the Secretary's Criteria for Recognition.

Based on a review of the information and documentation, the Accreditation Group has found that some aspects of the agency's accreditation review process do not meet the Secretary's Criteria for Recognition. Specifically, the Accreditation Group has determined that the ACCJC is out of compliance with 34 C.F.R. §§602.15(a)(3), 602.15 (a)(6), 602.18(e), and 602.20(a) of the Secretary's Criteria for Recognition, as described below:

1. The agency does not have a specific policy on the composition of on-site evaluation teams. The agency's "Policy on Commission Good Practice in Relations with Member Institutions" states that it will "include educators, academics, administrators and members of the public on evaluation teams." And, the agency's "Team Evaluator Manual" states that "Typically, a team has several faculty members, academic and student services

¹ The other interested parties are listed in the cc: section of the letter.

administrators, a chief executive officer, a trustee, a business officer, and individuals with expertise and/or experience in learning resources, distance/correspondence education, planning, research, evaluation, and baccalaureate programs.”

The agency provided in its response the composition of the two teams that evaluated CCSF in March 2012 and April 2013, both of which included a large number of administrators in comparison to the number of faculty members. In its petition, the agency provided the suggested standard evaluation assignments based on job title, as well as sample evaluation team rosters. This information does not specifically require nor demonstrate adequate representation of both academic and administrative personnel on evaluation teams, nor does it evidence the agency’s following its statement in its Team Evaluator Manual that it typically includes several faculty members on a team. In addition, the agency does not state in any materials that agency staff could or would serve on an evaluation team; however an ACCJC staff member was listed as a member of the team for the April 2013 evaluation of CCSF.

Section 602.15(a)(3) of the Secretary’s Criteria for Recognition requires that if an agency accredits institutions, as the ACCJC does, then it must have academic and administrative personnel on its evaluation, policy, and decision-making bodies. The criterion expects a good faith effort by the agency to have both academic and administrative personnel reasonably represented. One academician on an evaluation team comprised of eight and 16 individuals, as was the case for the April 2013 and March 2012 evaluation teams, respectively, of CCSF, is not reasonable representation. The agency must demonstrate that it ensures that both academic and administrative personnel are adequately represented on its evaluation teams.

2. The agency’s “Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Commission Representatives” states that one purpose of the policy is to minimize relationships that might bias deliberation, decisions or action.

The agency stated that there is no commonly-accepted rule within the accreditation community, nor the higher education community-at-large, that would disqualify an individual’s participation on an evaluation team because his/her spouse was employed by the accrediting agency. In addition, the agency also stated that this conflict would only exist if there was an avenue for either spouse to exploit the situation for personal or professional financial gain, or if in opposing roles within the process. However, the existence of a conflict of interest, or the appearance of a conflict, cannot be determined without considering the specific factual situation. Here, the team member is the spouse of the president of ACCJC, and the president regularly represents the Commission in a wide variety of capacities. And, there does not have to be an opportunity for financial gain by an individual for there to be the appearance of a conflict of interest.

Section 602.15(a)(6) of the Secretary’s Criteria for Recognition requires not just clear and effective controls against conflicts of interest, but also against the appearance of conflicts of interest. The appearance of a conflict of interest is present if there is a

potential for the personal interests of an individual to clash with fiduciary duties. Personal interest includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favors for family and friends. Even knowing the complex structure of the ACCJC's accreditation process and that accreditation decisions are made by the Commission, the participation of the spouse of the president of the ACCJC on an evaluation team has the appearance to the public of creating a conflict of interest (i.e., an appearance of bias of the Commission in favor of the team's position over that of the institution's). Therefore, the Accreditation Group determined that this practice 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.

3. The agency's "Policy on Commission Actions on Institutions" states that the action to reaffirm accreditation includes recommendations that "are directed toward strengthening the institution, not correcting situations where the institution fails to meet the Eligibility Requirements, Accreditation Standards and Commission policies." The action to reaffirm with a follow-up report is made when an institution "has recommendations on a small number of issues of some urgency which, if not addressed immediately, may threaten the ability of the institution to continue to meet the Eligibility Requirements, Accreditation Standards and Commission policies."

The agency stated in its response that it has two types of recommendations – "to meet the standard" or "to increase institutional effectiveness," as also noted in the policy excerpts above. What is not clear is how the recommendations are differentiated between those two types and how an institution, an evaluation team, the Commission, or the public is to know the difference.

In the Executive Committee report of the agency's own review of the CFT complaint, the agency states the following:

It is accurate that the 2006 Report found that the institution met sufficient numbers of standards to have its accreditation reaffirmed. However, the 2006 report also included eight "major recommendations." When the Commission met and considered the 2006 Report at its Commission Meeting on June 7-9, 2006, it considered two of the "recommendations" to be serious enough to require that the institution take corrective action and provide the Commission with a Progress Report.

And, later in the same section of the report:

The Evaluation Report (the "2012 Report") of the team that visited the institution in March of 2012 documented that, between 2006 and 2012, the situation at CCSF had deteriorated dramatically, and many of the areas which were noted only as "recommendations" in the 2006 Report had deteriorated to the extent that they

had become serious deficiencies in 2012.

This summary alone reflects the difficulty to ascertain what a recommendation represents – an area of noncompliance or an area for improvement.

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. The agency must demonstrate that it provides a detailed written report that clearly identifies any deficiencies.

4. As previously stated, the agency uses the term "recommendation" to mean an institution has a deficiency in meeting at least one of the agency's standards, or the institution meets the standard but could use additional effort or improvement in this area. Within the agency's "Policy on Commission Actions on Institutions," it states that the action to reaffirm with a follow-up report includes recommendations and the Commission expects the resolution of those recommendations within two years. As the Commission expects the resolution of the recommendations, the use of the term recommendation in this instance is assumed to mean noncompliance with a standard.

Section 602.20(a) of the Secretary's Criteria for Recognition requires that if an agency's review of an institution under any standard indicates that the institution is not in compliance with that standard, the agency must initiate an adverse action or provide a timeframe of no more than two years for the institution to bring itself into compliance. The Commission noted this specific requirement and recited the correct interpretation of the regulation in its response. However, it appears that the Commission continues to implement the required enforcement timeframe only after the agency has imposed a sanction on an institution.

Specifically, the agency's "Policy on Commission Actions on Institutions" states that if an institution cannot demonstrate that it meets the agency's standards, then it will be placed on sanction and will have two years to come back into compliance. This policy language indicates that only once an institution is placed on an agency-defined sanction is a deficiency required to be remedied within the enforcement timeline, whereas the regulation has no such limiting language for an area of non-compliance.

In its response, the agency states that the recommendations included in the 2006 Commission action letter to CCSF to reaffirm the institution's accreditation and require a follow-up report needed to be resolved within a limited timeframe. As excerpted above, the Commission considered two of the recommendations "serious enough" to require interim reports (a progress report in 2007, a focused midterm report in 2009, and a

follow-up report in 2010). And, the agency stated in the 2012 Commission action letter to CCSF that part of the reason for the show cause order was the failure of the institution to correct areas of noncompliance cited in 2006. The agency cannot treat an issue serious enough to require reporting and to be part of the rationale for a show cause order, but not serious enough to enforce the timeframe to return to compliance, as required by federal regulation.

The Commission has not demonstrated appropriate implementation of this regulation. Allowing an institution to be out-of-compliance with any standard for more than two years is not permissible within §602.20(a) of the Secretary's Criteria for Recognition. The agency must demonstrate that it initiates an adverse action² or provides a timeframe of no more than two years for an institution to bring itself into compliance if an agency's review of an institution under any standard indicates that the institution is not in compliance with that standard. At the end of that two-year period, the agency is obliged to take an adverse action if the institution remains out of compliance with the standard.

The Department finds that ACCJC does not meet the requirements of the sections cited above. Section 496(l) of the Higher Education Action of 1965, as amended, 20 U.S.C. §1099(b)(1), requires the Department to initiate adverse action when it determines that a recognized accrediting agency fails to meet the Criteria for Recognition. Alternatively, the Department may allow the accrediting agency a limited timeframe, not to exceed 12 months, to come into compliance. Therefore, 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 non-compliance identified in this letter. Please provide your response to the specific sections in this letter, within your response to the draft staff analysis of the agency's petition for recognition to the Accreditation Group.

The Department noted other issues raised in the complaints submitted and considered those in the course of its review. To the extent issues identified by the staff from the complaints have not been discussed above, they are issues which the staff concluded were either not related to the Secretary's Criteria for Recognition or were found to be compliant with the Secretary's Criteria for Recognition within the context of this review. As the agency has submitted a petition for recognition to the Department, a complete review of all sections of the Secretary's Criteria for Recognition will be conducted in that context and it is possible that areas of non-compliance could be found that were touched on in the complaints but not identified as such by the staff in reviewing the complaints.

² The Secretary's Criteria for Recognition define "adverse action" as denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

If you have any questions regarding this letter's content, please contact Elizabeth Daggett, by phone at 202-502-7571 or email at Elizabeth.Daggett@ed.gov. Thank you for your cooperation in this matter.

Sincerely,



Kay W. Gilcher, Director
Accreditation Group

Cc: Mr. Robert J. Bezemek,
Counsel for Third Parties and Complainants
California Federation of Teachers
AFT Local 2121
Additional complainants not listed individually

Mr. Alvin Ja

Mr. Paul Harvell

Ms. Wendy Kaufmyn

Mr. Rick Baum

Mr. Martin Hittelman

Mr. Thomas Brown

Mr. Rick Sterling

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

SARA J. EISENBERG
DEPUTY CITY ATTORNEY

Direct Dial: (415) 554-3857
Email: sara.eisenberg@sfgov.org

August 13, 2013

Barbara Beno, President
Dr. Sherrill Amador, Chair
Accrediting Commission for Community and Junior Colleges
10 Commercial Blvd., Suite 204
Novato, CA 94949

Re: Preservation of Documents Concerning Accreditation Activities

Dear Ms. Beno and Dr. Amador:

Please be advised that the San Francisco City Attorney's Office is in the process of investigating certain matters pertaining to the Accrediting Commission for Community and Junior Colleges' evaluation and sanction of City College of San Francisco ("CCSF") and other California community Colleges. I am writing to request that you preserve any and all documents and records in the custody or control of the ACCJC, whether in printed or electronic form, concerning:

1. City College of San Francisco—including but not limited to documents and records generated or considered by ACCJC officers, commissioners, staff, team members and any other agents or employees of the ACCJC, in connection with the comprehensive evaluation of CCSF during spring of 2012, the subsequent decision to place CCSF on Show Cause sanction, the Show Cause evaluation of CCSF in spring of 2013, and the subsequent decision to terminate CCSF's accreditation effective July 31, 2014; and
2. Other institutions that have been sanctioned by the ACCJC since 2008.

We appreciate your assistance and cooperation with this request. Please feel free to contact me with any questions.

Very truly yours,

DENNIS J. HERRERA
City Attorney


Sara J. Eisenberg
Deputy City Attorney

1
2
3 **BEFORE THE BOARD OF GOVERNORS**
4 **CALIFORNIA COMMUNITY COLLEGES**
5
6

7
8 In re Legal Challenge and Petition for
9 Rulemaking to Amend Title 5, Section 51016
10 of the California Code of Regulations.
11
12

13
14 **LEGAL CHALLENGE AND PETITION FOR RULEMAKING**
15
16

17 DENNIS J. HERRERA,
18 City Attorney
19 THERESE M. STEWART
20 Chief Deputy City Attorney
21 OWEN CLEMENTS
22 Chief of Complex & Special Litigation
23 THOMAS S. LAKRITZ
24 YVONNE R. MERE
25 SARA J. EISENBERG
26 1390 Market Street, 7th Floor
27 San Francisco, California 94102-5408
28 Telephone: (415) 554-3800
Facsimile: (415) 554-3985
E-Mail: sara.eisenberg@sfgov.org

For: CITY AND COUNTY OF SAN FRANCISCO

27 August 22, 2013
28

Pursuant to California Education Code section 70901.5(a)(7) and section 212 of the Procedures and Standing Orders of the Board of Governors, the CITY AND COUNTY OF SAN FRANCISCO (“CITY”) hereby petitions the Board of Governors of the California Community Colleges (“BOG”) to amend Title 5, section 51016 of the California Code of Regulations.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. The California Community Colleges is the largest system of higher education in the nation, with 2.4 million students in attendance. Historically, California’s community colleges have been an integral part of California’s pioneering tripartite system of higher education.

2. Currently, three out of every ten Californians ages 18-24 are enrolled in a community college; more than 60 percent of community college students are people of diverse ethnic backgrounds; and 41 percent of all California veterans receiving GI educational benefits attend a California community college for workforce training, to earn an associate degree or to work toward transferring to a four-year university.

3. The Legislature has prescribed the mission of California community colleges in broad terms: “to provide an opportunity for college instruction for all Californians capable of benefiting from instruction.” A.B. 1725, Stats. 1998 ch. 973. It has further declared that community colleges have found their mission in part from “local commitments to meet the needs of different communities—urban and rural, middle class and poor.” The Legislature has articulated the “conviction” that community colleges “ought to provide high quality lower division instruction,” not only “for purposes of transfer to baccalaureate institutions” but also “to meet vocational and basic educational needs.” Rejecting the vision of community colleges as “‘junior colleges’ devoted primarily to providing middle-class youth with a local option to the lower-division years of college,” the Legislature articulated a broader vision that encompasses “the tasks of retraining workers, teaching English to those recently among us, providing skills and opportunities for the elderly, providing a second chance to those who were failed by our secondary schools, and still providing lower division transfer education of quality and integrity for all who want it.”

4. California’s 112 community colleges are divided into 72 community college districts, each of which is governed by a local board of trustees. Under state law, these colleges and districts are

1 overseen by the Board of Governors of the California Community Colleges (“BOG” or “Board”). The
2 BOG exercises general supervision, sets policy consistent with legislative directives, and provides
3 guidance to California’s 112 community colleges. The BOG is also responsible for selecting a State
4 Chancellor for the California Community College system who, through a formal process of
5 consultation, brings recommendations to the BOG.

6 5. Consistent with the Education Code requirement that the BOG maintain “to the
7 maximum extent possible” local control of community colleges, the stated mission of the BOG and the
8 Chancellor’s Office is to “empower the community colleges through leadership, advocacy and
9 support.”

10 6. As illustrated by the recent events concerning City College of San Francisco (“City
11 College” or “College”), the BOG has failed to fulfill its mission, abdicated its oversight
12 responsibilities and violated state law in ways that disempower local communities, community
13 colleges and community college boards.

14 7. The BOG is obligated to set minimum conditions for community colleges and to
15 conduct a review to ensure that those conditions are met. But rather than promulgating regulations
16 setting forth specific criteria and standards, which under state law would be subject to public debate
17 and to veto by local community college districts, the BOG delegated the setting of standards (and
18 evaluation of compliance with those standards) to a private third-party, the Accrediting Commission
19 for Community and Junior Colleges (“ACCJC”).

20 8. By giving a private entity sole and absolute discretion to set the standards by which all
21 California community colleges will be evaluated, the BOG has prevented the public and the local
22 districts from providing input or guidance on the standards that govern our community college system,
23 and has enabled that private entity to impose standards that are contrary to the Legislature’s prescribed
24 broad mission for community colleges and its directive that local communities tailor the mission of
25 their colleges to meet local needs. And by giving a private entity the sole and absolute discretion to
26 make decisions on the accreditation status of all California community colleges, the BOG has
27 abdicated its oversight responsibility and placed the fate of California’s community colleges in the
28

hands of an unaccountable, non-local entity. Moreover, the BOG stripped Californians of the right to a democratic and transparent regulatory process in the area of higher education.

INTEREST OF THE CITY AND COUNTY OF SAN FRANCISCO

9. The CITY has a beneficial interest in performance by the BOG of their duties to manage and oversee community colleges properly in accordance with state law.

10. More specifically, the CITY sends employees and agents to City College for professional training and completion of certain certification programs. For example, the City uses City College to provide specialized training services to foster parents, resource families and Family and Children's Services staff to improve the quality of care for children and youth in foster care. City College's tentative budget summary for the 2013-2014 fiscal year includes nearly \$700,000 from CITY contracts. As such, the CITY has a distinct interest in City College's accreditation and survival.

11. The San Francisco community provides a substantial part of the funds for City College, and City College predominantly serves local residents. Thus, the local community that the CITY and its elected officials represent has a strong interest in the mission, governance and operations of City College, which is funded in part by and serves predominantly local residents. City College is funded in significant part through local property and sales taxes. As state funding for community colleges has been cut dramatically over the past several years, the need for local funding and the share of funding that is provided by the local community has increased.

12. The local community's strong interest in City College is reflected by the passage, by 2/3 of the CITY's voters in the November 2012 election, of a special parcel tax to provide additional revenue for the operations of City College.

13. The CITY is also an "interested party" as defined by California Education Code section 70901.5 and Procedures and Standing Orders of the Board of Governors section 202(c).

DISCUSSION

14. As described above, California Community Colleges are overseen by the BOG. *See* Ed. Code § 70901 (providing that the BOG "shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state").

1 15. The Legislature requires that the BOG “shall at all times be directed to maintaining and
2 continuing, to the maximum degree permissible, local authority and control in the administration of
3 the California Community Colleges.” *Id.*

4 16. As a result, California Community Colleges are divided into 72 local Community
5 College Districts, with a local governing board of trustees comprised of locally elected members
6 (“Board of Trustees”). The role of the Board of Trustees is to oversee the operations and budgets of
7 local colleges within their districts. City College is part of the San Francisco Community College
8 District (“SFCCD”) and is designed to be—and until recently has been—governed by seven elected
9 members (“City College Board of Trustees”).

10 17. The Legislature has delegated specific rights and responsibilities to the BOG.

11 18. As relevant here, the Legislature vested the BOG with an obligation to “[e]stablish
12 minimum conditions entitling districts to receive state aid for support of community colleges” via
13 regulation. Ed. Code § 70901(b)(6). Those regulations would then be subject to public comment and
14 veto power by a supermajority of local community college boards. *See* Ed. Code § 70901(b)(6);
15 Procedures and Standing Orders of the Board of Governors §§ 206, 208 (January 2013).

16 19. Yet rather than develop minimum conditions itself, the BOG improperly delegated
17 these discretionary powers to a private, third-party entity. Specifically, the BOG enacted a regulation
18 requiring colleges to be accredited by a private accrediting entity, the Accrediting Commission for
19 Community and Junior Colleges (“ACCJC”), in order to be eligible for state aid. 5 California Code of
20 Regulations § 51016 (“Each community college within a district shall be an accredited institution.
21 The Accrediting Commission for Community and Junior Colleges shall determine accreditation.”)
22 The BOG imposed no limits on this broad delegation of authority and retained no right to evaluate or
23 review an ACCJC decision to terminate a college’s accreditation before that decision automatically
24 renders the college ineligible for state funding.

25 20. The ACCJC operates under the umbrella of the Western Association of Schools and
26 Colleges (“WASC”). WASC consists of three separately organized commissions within the western
27 region: 1) the Accrediting Commission for Senior Colleges and Universities, which accredits public
28 and private senior colleges and universities; 2) the ACCJC, which evaluates and accredits public and

1 private postsecondary institutions that offer two-year education programs and award the associate
2 degree; and 3) the Accrediting Commission for Schools, which accredits all schools below the college
3 level, including elementary, junior high, middle, high and adult schools.

4 21. The ACCJC is made up of two bodies: the Commission, which sets accreditation
5 standards and makes decisions on the accreditation status of community and junior colleges, and the
6 staff, which manages and supports the accreditation activities of the Commission.

7 22. The ACCJC has sole and absolute discretion to set the standards by which member
8 institutions, including all California Community Colleges, will be evaluated for accreditation and
9 eligibility for state aid. Although there are some broad guidelines mandated by federal regulation, the
10 ACCJC creates its own additional standards. ACCJC standards are not subject to review, approval, or
11 modification by the BOG or any other administrative body. Because the ACCJC is a private third-
12 party entity, its functions, procedures and decision-making processes are not subject to California's
13 open meeting laws or public records laws.

14 23. By making accreditation by the ACCJC a minimum condition for state aid, the BOG
15 has misinterpreted its statutory obligation and improperly delegated an important discretionary duty to
16 a private entity.

17 24. The BOG is also required to "carry out a periodic review of each community college
18 district to determine whether it has met the minimum conditions prescribed by the board of
19 governors." Ed. Code § 70901(b)(6).

20 25. But the ACCJC has sole and absolute discretion to make decisions on the accreditation
21 status of all member institutions. This decision is not subject to review by or appeal to the BOG.

22 26. The delegation of this power to the ACCJC without oversight, accountability or checks
23 and balances not only violates state law, but also undermines California's democratic processes. It
24 renders accreditation and sanction decisions secretive, leaving Californians with little ability to
25 participate, review, or challenge decisions that should be transparent and public.

26 27. Overall, by conditioning state funding on compliance with standards established and
27 applied by a private entity, the BOG has impermissibly delegated discretionary legislative and quasi-
28 judicial powers that the Legislature vested exclusively with the BOG. The result vests an enormous

1 amount of power in a private third-party entity to mold and control the future of community college
2 education in the State of California.

3 28. As illustrated by the ACCJC's recent decision to terminate City College's accreditation
4 in July 2014, this delegation enables a private entity to subvert the Legislature's prescribed broad
5 mission for community colleges, as well as the legislative directive that local communities tailor the
6 mission of their colleges to meet local needs, through application and enforcement of accreditation
7 standards. Moreover, the process surrounding accreditation evaluations is opaque and leaves
8 California community colleges like City College vulnerable to the whims of a private entity rather than
9 answerable to a governmental agency.

10 29. City College is a longstanding community institution that has served the postsecondary
11 education needs of millions of Californians since 1935. City College is the largest community college
12 in California and one of the largest in the nation. In the 2012-2013 school year, it served more than
13 85,000 students of all ages, races and socio-economic status. At its ten campuses and a multitude of
14 neighborhood sites throughout San Francisco it offers dozens of different associate degrees, hundreds
15 of credit and noncredit certificate programs and thousands of classes—including noncredit classes
16 offered for free to anyone who could benefit from further education. For many San Francisco
17 residents, City College is the only viable option for higher education. For relatively little cost,¹
18 students of all ages and backgrounds can attend the College to earn an associates degree, to acquire
19 sufficient credits to transfer to a four-year bachelors degree program or to acquire valuable skills that
20 will allow them to find a job or advance their careers.

21 30. Prior to 2012, City College had no public record of discipline, sanctioning or findings
22 of deficiency by the BOG or the ACCJC. Yet, in June 2012, all that changed, and within the year, the
23 ACCJC had voted to terminate City College's accreditation.

24 31. In spring of 2012, an ACCJC evaluation team comprised mainly of administrators
25 conducted a site visit at City College and prepared an Evaluation Report. The Evaluation Report
26

27 ¹ As with local funding sources, enrollment fees have risen significantly as state funding for community colleges
28 has declined. Even with such increases, however, community colleges like City College remain by far the most affordable
post-secondary education option available.

1 concluded that City College was only partially compliant with several accreditation standards and
2 made fourteen recommendations that, if implemented, would help the College come into compliance.

3 32. On or about June 6-8, 2012, the ACCJC voted to put City College on “Show Cause”
4 status. Show Cause status is a rare and harsh sanction meted out by the ACCJC when “the
5 Commission finds an institution to be in substantial non-compliance with its Eligibility Requirements,
6 Accreditation Standards, and Commission policies, or when the institution has not responded to the
7 conditions imposed by the Commission.” ACCJC Policy on Commission Actions on Institutions
8 Section IV(C). The Show Cause sanction was not the result of a public hearing process but rather of a
9 closed, private meeting of the ACCJC Commission. It is a sanction that is neither reviewable nor
10 appealable.

11 33. On July 2, 2012, the ACCJC sent a letter informing City College that it was being
12 placed on “Show Cause.” That letter required City College to submit a Special Report by October 15,
13 2012, detailing City College’s overall plan to address the ACCJC’s concerns and the findings
14 contained in the Evaluation Report. In addition, the ACCJC asked that City College submit two
15 additional reports to the ACCJC by March 15, 2013: a “Show Cause Report” demonstrating that it
16 corrected the deficiencies found by the Commission and a “Closure Report” with a plan for orderly
17 closure of the College in the event of a loss of accreditation.

18 34. As required by the ACCJC, City College timely submitted their Special Report on
19 October 15, 2012 and their “Show Cause” and “Closure” Reports on March 15, 2013.

20 35. In April 2013, the ACCJC convened a second evaluation team, called the Show Cause
21 Visiting Team, to visit City College and evaluate whether it met the ACCJC’s accreditation standards
22 and had addressed the recommendations of the 2012 Evaluation Team.

23 36. Although the Show Cause Visiting Team’s report (called the Show Cause Evaluation
24 Report) found that CCSF had not completely addressed all fourteen recommendations made by the
25 2012 Evaluation Team or come into full compliance with all accreditation standards, it also made clear
26 that CCSF had made enormous progress and was on track to resolve many of the outstanding issues
27 given more time. *See generally* Show Cause Evaluation Report: City College of San Francisco (2013).
28 The report concluded that CCSF had fully addressed four of the recommendations and had “partially

1 addressed” the other ten. Overall, the Show Cause Visiting Team reported being “impressed with the
2 engagement and responsiveness of the entire college community to take corrective measures to meet
3 the ACCJC Accreditation Standards and Eligibility Requirements in response to the Commission
4 directives in its July [2], 2012 accreditation decision letter.” *Id.* at 9.

5 37. Despite this positive feedback, on or about June 5-7, 2013, the ACCJC voted to
6 terminate City College’s accreditation. This decision to terminate City College’s accreditation was not
7 the result of a public process but rather the result of a closed meeting of the ACCJC. The decision to
8 terminate City College’s accreditation was not (and cannot be) reviewed, approved or even heard by
9 the BOG—and the BOG has reserved no discretion to evaluate or review the decision or its underlying
10 findings before the loss of accreditation automatically disqualifies City College from receiving state
11 aid.

12 38. Moreover, although the ACCJC’s decision can be (and is being) appealed to the
13 ACCJC itself, the ACCJC requires that all materials related to the appeal be treated as strictly
14 confidential. *See* Letter from Robert F. Agrella, Special Trustee, City College, to the College
15 Community (Aug. 19, 2013) (“[W]e cannot share the review documents because we have been clearly
16 informed by the Commission that all parts of the appeal process, including the review, are to be treated
17 as confidential.”). This means that City College stakeholders and members of the community have no
18 voice—or even window—into the last-resort appellate process.

19 39. In sum, the BOG has a clear duty to establish minimum conditions for California’s
20 community colleges and to review “each community college district to determine whether it has met
21 the minimum conditions prescribed by the board of governors.” Ed. Code § 70901(b)(6). The BOG
22 has made the maintenance of accreditation one of those minimum conditions. But the accreditation
23 procedure is not itself a proper minimum condition. Rather, accreditation is a process in which
24 minimum conditions must be set. And according to California’s Education Code, these minimum
25 conditions are to be set *and* reviewed by the BOG itself, rather than delegated to a third party agency.

26 CONCLUSION

27 40. In section 51056 of Title 5, the BOG improperly delegated its obligation to set
28 “minimum conditions entitling districts to receive state aid for support of community colleges” and to

1 “carry out a periodic review of each community college district to determine whether it has met” those
2 standards, as per Education Code section 70901(b)(6). The BOG should amend section 51056 to
3 ensure that the BOG is fulfilling its statutory mandate to establish, and evaluate community colleges’
4 compliance with, minimum conditions for state funding.
5

6 Dated: August 22, 2013

7 DENNIS J. HERRERA
8 City Attorney
9 THERESE M. STEWART
10 Chief Deputy City Attorney
11 OWEN CLEMENTS
12 YVONNE R. MERE
13 THOMAS S. LAKRITZ
14 SARA J. EISENBERG
15 Deputy City Attorneys

16 /s/

17 By: _____
18 SARA J. EISENBERG
19 Attorneys for
20 CITY AND COUNTY OF SAN FRANCISCO
21
22
23
24
25
26
27
28