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National Advisory Committee on
Institutional Quality and Integrity

Email: ThirdPartyComments@ed.gov

Via Email

Re: Written Comments: Accrediting Commission of Community and Junior Colleges
("ACCJC")

To whom it may concern:

In August 2013, I filed a lawsuit against the ACCJC on behalf of the People of the State of California. The lawsuit alleged, among other things, that the ACCJC acted unlawfully by failing to provide City College of San Francisco with written notice of all alleged deficiencies before voting to terminate the college's accreditation. The San Francisco Superior Court agreed, holding that the ACCJC violated 34 C.F.R. section 602.18(e) with respect to its 2013 evaluation of City College. Statement of Decision at 53 & 68, *People v. Accrediting Commission for Community and Junior Colleges*, Case No. CGC-13-533693 (Feb. 17, 2015). More importantly for present purposes, sworn statements made by the ACCJC during proceedings in the lawsuit also demonstrate that the ACCJC remained out of compliance with section 602.18(e). Indeed, the agency refused to even acknowledge—much less comply with—its obligations pursuant to this regulation.

In the context of the statutory and regulatory requirements that apply to accrediting agencies, the term "deficiencies" unambiguously means a lack of compliance with the agency's accreditation standards. Indeed, this definition is built into the language of 602.18(e), which requires agencies to "[p]rovide[] the institution . . . with a detailed written report that clearly identifies any *deficiencies in the institution's or program's compliance with the agency's standards.*" 34 C.F.R. § 602.18(e) (emphasis added); *see also* U.S. Department of Education, Office of Postsecondary Education, Accreditation Division Guidelines for Preparing/Reviewing Petitions and Compliance Reports at 47 (Jan. 2012) (stating that in assessing an accrediting agency's compliance with 602.18(e), "Department staff look to see if the agency discussed and demonstrated . . . how agency reports are comprehensive in clearly indicating *any/all areas of noncompliance with each of the agency's standards*") (emphasis added).

Accordingly, 602.18(e) requires the ACCJC to provide a written report that clearly identifies when an institution has failed to meet an agency standard. However, in order to defend its decision to terminate City College's accreditation—a decision that was based in part on the alleged failure to meet standards that ACCJC expressly told City College it had met—the ACCJC redefined the term "deficiencies," and then repeatedly took the position that it has no obligation to inform an institution that it fails to meet a standard. For instance:

Third Party Comment to NACIQI

Page 2

September 24, 2015

- In its opposition to the People’s motion for summary judgment, the ACCJC stated that “[t]he word ‘deficiency’ does not refer to a specific standard or substandard, as the People contend.” Rather, the ACCJC claimed that a “‘deficiency’ is a reference to the factual basis for the Commission’s ultimate decision when an institution fails to comply with particular standards or substandards.” Memorandum of Points and Authorities in Opposition to Plaintiff’s Motion for Summary Adjudication at 16, *People v. Accrediting Commission for Community and Junior Colleges*, Case No. CGC-13-533693 (Aug. 11, 2014).
- During her deposition, ACCJC President Barbara Beno provided the following convoluted testimony about the meaning of “deficiencies” versus lack of compliance with an accreditation standard:
 - Q. And what [does] deficiencies in meeting standards in ER mean?
 - A. Deficiencies are behaviors that lead to noncompliance with the standards in ERs—I’m sorry—eligibility requirements.
 - Q. Deficiencies are behaviors that lead to noncompliance in meeting standards in ERS?
 - A. And policies.
 - Q. So deficiencies are behaviors that lead to noncompliance with little S standards?
 - A. Yes. . . .
 - Q. Does a deficiency—If a deficiency which is behaviors that leads to noncompliance of a standard, if an institution is told they are deficient, are they also being told that they did not meet the standard?
 - A. They are related. They are not the same thing.
 - Q. How are they different?
 - A. A college has to meet the standard by—by showing evidence that it does what the standard requires, but colleges achieve reaching the standard through their behaviors.

Transcript of Deposition of Barbara A. Beno at 66:15-67:25 (Oct. 14, 2014).¹

- At trial, President Beno testified that a “[d]eficiency is a behavior at the institution that lead—or behaviors, plural—that leads to noncompliance. It’s a description of the facts on the ground at the college.” Trial Transcript at 433:13-15 (October 29, 2014).

Put simply, the ACCJC repeatedly denied that “deficiency” means the failure to meet an accreditation standard. And, on this basis, the ACCJC insisted that it is *not* required to provide institutions with a written report identifying areas of alleged noncompliance, as long as the report identifies the “facts on the ground” that could cause the Commission find the institution out of

¹ President Beno also testified in her deposition that “as an experienced reader of accreditation document[s],” she knows that when the Commission pulls out certain recommendations and asks an institution to respond to those recommendations quickly, that means the Commission believes there is a deficiency. Beno Depo. Tr. 142:16-143:24. This indicates that the ACCJC expects institutions to read the Commission’s mind and glean deficiencies from subtle clues—hardly the “detailed written report that clearly identifies any deficiencies” required by regulation.

Third Party Comment to NACIQI
Page 3
September 24, 2015

compliance with a standard.² In its Post-Trial Brief, for example, the ACCJC accused the People of

attempt[ing] to create the erroneous impression that [City College of San Francisco] needed to be given notice of and opportunity to challenge the Commission's ultimate decision – whether the conditions at [City College of San Francisco] met “Accreditation Standards” – as opposed to notice of and the opportunity to comment on and/or correct the statements of fact – the “deficiencies” – which the Commission would be considering in reaching its decision. (ACCJC's Post-Trial Brief at 36, *People v. Accrediting Commission for Community and Junior Colleges*, Case No. CGC-13-533693 (Dec. 3, 2014).)

Of course, there is nothing “erroneous” about the notion that the ACCJC has to provide institutions with notice of areas of noncompliance. That is what 34 C.F.R. section 602.18(e) requires. The ACCJC does not—indeed cannot—comply with an obligation that it refuses to even acknowledge it has.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'D.J. Herrera', is written over the typed name.

DENNIS J. HERRERA
City Attorney

² Unsurprisingly, the San Francisco Superior Court rejected the ACCJC's argument, noting that the ACCJC's definition of “deficiency” is “not a reasonable interpretation.” Statement of Decision at 52, *People v. Accrediting Commission for Community and Junior Colleges*, Case No. CGC-13-533693 (Feb. 17, 2015).