



**ACCREDITING
COMMISSION
for COMMUNITY and
JUNIOR COLLEGES**

*Western Association
of Schools and Colleges*

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August 28, 2013

To: ACCJC Member CEOs and ALOs

From: Barbara A. Beno, President *Barbara A. Beno*

Subject: USDE Letter to ACCJC of August 13, 2013

I write on behalf of the Accrediting Commission for Community and Junior Colleges (the "ACCJC") with respect to the United States Department of Education's (the "USDE" or the "Department") letter¹ to the ACCJC dated August 13, 2013, which primarily responded to a complaint filed by the California Federation of Teachers (the "Complaint"). The Complaint and the USDE Letter concern the ACCJC's accreditation review process of the City College of San Francisco ("CCSF"), which has received a great deal of publicity. This letter is intended to provide the ACCJC's preliminary analysis with respect to the USDE Letter, and also describe the USDE's process for handling the ACCJC's response.

The USDE Letter

The USDE Letter identifies four findings of alleged non-compliance with respect to USDE regulations. Each of the findings is discussed below, but please initially note that: (i) these are preliminary findings; (ii) the ACCJC was not notified of these findings in advance of its receipt of the USDE Letter on August 13, 2013; and (iii) the ACCJC is provided an opportunity to respond to these findings in the course of its recognition review.

The first USDE finding concerns section 602.15(a)(3) of USDE regulations, which states 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 USDE found that the two teams that evaluated CCSF in 2012 and 2013, respectively (the "Evaluation Teams"), did not have sufficient "academic personnel" representation. While USDE regulations do not define "academic personnel", the USDE *Guidelines for Preparing/Reviewing Petitions and Compliance Reports* (the "Guidelines")² state, "in the absence of agency-defined terms, the [USDE] staff generally apply the . . . common understanding" for "academic personnel" as "someone currently or recently directly engaged in a significant manner in postsecondary teaching and/or research."

The ACCJC has long considered faculty, department chairs, deans, vice presidents, and some others to be academic personnel, which is in line with the definition of academics that institutions use in reporting to the Integrated Postsecondary Education Data System ("IPEDS").

¹ The USDE Letter can be found on the ACCJC website.

² The Guidelines is USDE's document providing guidance with respect to USDE regulations and is available on both the USDE and ACCJC websites.

Nevertheless, in making its finding that the evaluation teams lacked sufficient academic personnel, the USDE Letter disregarded the presence of two faculty who have the role of Department Chair, as well as many other personnel who ACCJC considers to be academics (e.g., Assistant Deans, Vice Presidents, Counselors, and Librarians), indicating that the Department's "common understanding" with respect to academics is that the term only includes full-time teaching faculty. The USDE did not contact the ACCJC regarding its definition of academics before making its findings, nor did it attempt to comport with the definition as used by IPEDS. Accordingly, the ACCJC feels the USDE's finding that the review boards had insufficient academics may be mistaken; nevertheless, ACCJC is still reviewing the USDE Letter to determine what changes, if any, might be appropriate to resolve the issue.

The second USDE finding concerns section 602.15(a)(6) of the USDE regulations, relating to conflicts of interest. It is important to note that the USDE did not find any actual conflict of interest. Rather, the USDE found that "the participation of the spouse of the president of ACCJC on an evaluation team has the appearance to the public of creating a conflict of interest" and asked that ACCJC demonstrate it has clear and effective controls against the appearance of conflicts of interest. The ACCJC is currently reviewing USDE regulations and its own internal policies and will make any changes it deems appropriate to resolve this issue.

The third USDE finding concerns regulation section 602.18(e), which requires an accreditation agency provide a detailed written report to an institution clearly identifying any deficiencies in the institution's compliance with the agency's standards. The ACCJC has a policy of providing institutions a team report that includes (i) a Findings and Analysis section detailing college conditions, (ii) a Conclusions section that states broadly whether an institution meets or does not meet a given standard, and (iii) team recommendations that begin either, "To meet the standards, the team recommends . . ." or, "To improve, the team recommends . . ." The Department found the Commission's use of the term, "recommendations" in its written report to CCSF to describe both areas of non-compliance and areas for improvement, as a "lack of clear identification" that "impacts the ability of the agency to provide due process."

The ACCJC believes that the team report, with its Findings and Analysis section, the Conclusions section and the team recommendations adequately identifies any deficiencies in compliance, and that the ACCJC policy of inviting a college to discuss any questions with staff provides even further guidance. Nevertheless, the ACCJC is currently reviewing its internal policies and will make any changes it deems appropriate to resolve this issue.

The fourth USDE finding concerns section 602.20(a) of the USDE regulations, which requires that, "if the agency's review of an institution . . . under any standard indicates that the institution is not in compliance with that standard, the agency must (1) Immediately initiate adverse action against the institution or program; or (2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within . . . two years." This is the "two-year rule" that the ACCJC has informed all member institutions about in virtually all trainings, and through language in its action letters, since 2008. The USDE Letter states that the ACCJC indicated to CCSF in 2006 that it was not in compliance with the ACCJC's Accreditation Standards, and thus triggered the two-year rule. We are currently reviewing this issue, but our initial impression is that the USDE Letter incorrectly interprets the applicable correspondence between ACCJC and CCSF in 2006, as well as ACCJC's policies.

The USDE Letter and Recognition Processes

The USDE Letter includes standard boilerplate language about the need for the ACCJC to come into compliance with USDE regulations within a one-year period. This period for an accreditor to come into compliance (the “one-year rule”) is defined by USDE regulation. However, the USDE has also informed the ACCJC it may respond to the USDE Letter in the course of the recognition review that is now ongoing. That process is described below.

The ACCJC’s petition for recognition by the USDE was submitted on June 5, 2013. Between that date and roughly the end of September, the staff of the Accreditation Group will review the entire application to determine whether ACCJC is compliant with all federal regulatory criteria for recognition. In late September or early October, the staff will issue its *preliminary report* to the Commission.

The ACCJC will then have about four weeks to respond to that preliminary report, which could include other findings of non-compliance.³ The ACCJC can respond by arguing and successfully demonstrating that the Department’s findings are wrong, can respond by making needed changes if possible within that time frame, or can respond that it will make some needed changes in the future but will need a period of time (not to exceed one year) to do so. The USDE staff then finalizes its report, which is forwarded to the National Advisory Committee on Institutional Quality and Improvement (“NACIQI”).

In December 2013, NACIQI will hold a hearing on each accrediting body seeking recognition renewal, initial recognition or presenting a compliance report (i.e., a report showing how it has complied after being found non-compliant). At the hearing, the ACCJC will have the opportunity to make an oral presentation on behalf of its petition, and to include information about its plans to address any still-outstanding areas of non-compliance. The Committee will make a decision on the recognition of ACCJC, which will be made public within 90 days of the NACIQI meeting. If the ACCJC still has areas of non-compliance, it will likely be required to provide a compliance report. It is standard practice that an accrediting body is given one year to resolve any areas of non-compliance (i.e., the one-year rule) before the Committee considers revoking recognition.

Final Comments

At this point, the ACCJC does not consider any of the USDE’s findings to be unresolvable. The ACCJC has not yet had the conversations with USDE staff that will, in the end, help ACCJC decide on its most effective course of action. The USDE’s review process is designed to help keep accrediting bodies “tuned up” to ensure they remain compliant with federal regulations, and the ACCJC treats the review process as an opportunity to improve.

³ To put things in perspective, in fall 2012 two other regional accrediting bodies undergoing recognition review received notice of dozens of areas of non-compliance, which they were able to largely address such that they had less than 10 outstanding by the time of the USDE hearing in December.