June 20, 2022

Re: Pima Community College's Corrections to Errors of Fact in the March 28-29, 2022 Focused Visit Draft Report

Introduction: Pima Community College (PCC) would like to thank the review team and the Higher Learning Commission (HLC) for the opportunity to submit the following corrections to errors of fact noted in the draft report of the March 28-29, 2022 Focused Visit. Although PCC's specific corrections are detailed below, the errors of fact noted by PCC can generally be summarized as follows:

- The draft report incorrectly assigns significant factual importance to decades-old issues at PCC that occurred during entirely different administrations;
- The draft report relies heavily on unsupported allegations and personal anecdotes garnered during a very small number of on-site interviews to make broad conclusions about overall conditions at PCC;
- The draft report affords significant, unexplained deference to unsupported "recommendations" made by C-FAIRR, a group with a long history of antagonism toward PCC's administration, despite the review team opting explicitly not to meet with that group;
- The draft report omits or understates highly relevant factual information, including reports and findings by the Arizona Attorney General, the Association of Governing Boards (AGB), and other neutral third parties retained by PCC to investigate related matters;
- The draft report omits empirical facts and college-wide statistical evidence demonstrating a high level of confidence and satisfaction in PCC and its administration by its employees – including in areas of diversity, equity, and inclusion – and instead accepts unquestioningly a very small number of unsubstantiated allegations and unverified complaints as persuasive facts;
- The draft report incorrectly involves the HLC in individual PCC employee grievances, specific Governing Board disagreements, and other fundamentally administrative issues beyond the scope of the Focused Visit or the HLC's authority regarding accreditation criteria.

Errors of Fact: Following review of the Higher Learning Commission (HLC) Review Team's draft Focused Visit Report, PCC respectfully submits the following corrections to errors of fact, which are addressed sequentially as they appear in the draft report:

1. On Page 2, Section 3, "Organizational Context," Paragraph 1, Line 2

Error: Use of "for" versus "of" in "Historically, the citizens for Pima County. . . ."

Factual Basis: N/A (grammatical)

Evidentiary Citation: N/A

Suggested Correction: Replace with the following: "Historically, the citizens of Pima County. . . ."

2. On Page 2, Section 3, "Organizational Context," Paragraph 2, Line 2

Error: Missing comma after "Learning Commission"

Factual Basis: N/A (typographical)

Evidentiary Citation: N/A

Suggested Correction: Insert comma between "Learning Commission" and "some of which…"

3. On Pages 2-4, Section 3, "Organizational Context" - Detailed Recitation of PCC's Accreditation History

Error: The draft report draws the factually incorrect and potentially prejudicial conclusion that problematic actions engaged in decades ago by different PCC actors "bear a relationship" to the complaint precipitating HLC's 2022 Focused Visit.

Factual Basis: The draft report's "fair amount of detail" discussed in relation to PCC's "accreditation history," though itself factually accurate, improperly finds "a relationship in some regards" between decades-old issues at PCC and "the reasons that occasion the [HLC's] current visit[.]" Moreover, the draft report's detailed recitation of PCC's prior issues makes an erroneous and unfairly prejudicial factual connection between PCC's current administration and these past incidents, some of which occurred more than forty years ago and all of which involved different PCC actors.

Evidentiary Citation: PCC's respectfully submits that this error of fact occurs in the factual conclusions drawn from the detailed recitation of "Pima's history," not in the individual facts themselves.

Suggested Correction: PCC respectfully suggests that all references throughout the draft report to a "relationship" or other inferential connection between past issues at PCC and PCC's contemporary administration, or to the current matters underlying the HLC's 2022 Focused Visit, be omitted.

4. On Page 3, First Full Paragraph, Lines 1-2

Error: The decision not to include the specific names of the "two community advocacy groups" who submitted complaints in 2021 about "governance issues at PCC" to the HLC is a material omission and a factual error.

Factual Basis: Certain self-styled "community advocacy groups" and their supporters have a long, well-documented history of submitting specious complaints, including requests for criminal investigations, to law-enforcement and regulatory agencies about PCC, its administrators, and its Governing Board. Some pertinent examples are noted below and include complaints to the Arizona Attorney General, the Arizona Auditor General, and the State Bar of Arizona, all of which were dismissed. These complaints are consistently found to be without merit by the various agencies to which they have been submitted.

Moreover, some of these "community advocacy groups" have undisputed connections to two current PCC Board Members, Maria Garcia and Luis Gonzales, who themselves have been found by the Arizona Attorney General to have engaged in clear violations of state open-meetings law by (among other transgressions) divulging confidential PCC information to persons with well-known involvement in these same community advocacy groups (see Exhibit 1, cited below). In Arizona, Open Meetings Law violations and the disclosure of confidential governmental information are very serious legal matters, and knowing violations may result in removal from office, forfeiture of employment, civil penalties, and/or misdemeanor and felony criminal convictions.

Given the draft reports' clear deference to and, in some instances, reliance upon various "recommendations" made by these groups and their members, PCC respectfully submits that it is an error of fact by material omission not to identify specifically the "community advocacy groups" referenced throughout the draft report and to acknowledge affirmatively their history of bringing unfounded complaints against PCC officials.

Evidentiary Citation: Please see Exhibit 1,The Arizona Attorney General's April 14, 2022 Notice Letter Finding Violations of the Open Meeting Law by Board Members Maria Garcia and Luis Gonzales; Exhibit 2, State Bar of Arizona's Dismissal of Luis Gonzales's October 12, 2021 Charge Against PCC General Counsel Jeff Silvyn (December 12, 2021); Exhibit 3, Arizona Attorney General's Criminal Division's March 30, 2021 Letter Declining to Investigate Sally Anne Gonzales's March 15, 2021 Complaint[1]; Exhibit 4, Arizona Auditor General's February 11, 2021 Email Declining Maria Garcia's January 14, 2021 Request for an Audit; see also Arizona Revised Statute (A.R.S.) 38-431.07; A.R.S. 38-504; and A.R.S. 38-510.

[1] Sally Ann Gonzales is a member of the Arizona State Senate; she is married to PCC Board Member Luis Gonzales.

Suggested Correction: PCC respectfully suggests that the draft report be revised throughout to specifically identify any community advocacy groups referenced therein.

5. On Page 4, Paragraph 3, Line 4 - Beginning, "In Addition, the Team Heard Testimony from College Faculty and Staff . . ."

Error: It is an error of fact to include this information in the report, given that it improperly draws broad factual conclusions about the Governing Board's role in overseeing employment processes and the general state of employee relations at PCC from a very small number of unsubstantiated employee complaints and personal anecdotes, while at the same time, omitting relevant statistical evidence reflecting a much higher level of overall employee satisfaction at PCC.

Factual Basis: PCC is aware that HLC reviewers met privately and individually with approximately five employees during the Focused Visit, which is less than .003% of the nearly 2,000 employees college-wide. Moreover, based on information available to PCC, the complaints in question appear to have originated from at most two specific individuals, who themselves represent approximately .001% of all PCC employees. PCC submits that the very small number of private, individual employee interviews conducted by the HLC reviewers and the extremely small number of complaints made by those individuals are not statistically significant and not a reasonable factual basis for drawing any broad conclusions about employee relations at PCC. Likewise, PCC's own Strategy, Analytics, and Research Department (StAR) has conducted empirical, college-wide surveys which consistently indicate high levels of employee satisfaction.

Additionally, characterizing what was said during these private, individual meetings with faculty and staff as "testimony" is, itself, a factual error. The term "testimony" conveys a formal statement that is made publicly, under oath, and/or in a court of law (or to an officer of the court authorized to administer oaths, such as a notary). These discussions with the review team had none of those characteristics.

Evidentiary Citation: Please see Exhibit 5, College Employee Satisfaction Survey Results and Interpretive Guide – 2022.

Suggested Correction: Given the extremely small number of employees interviewed privately and individually and the highly prejudicial nature of their anecdotes and complaints, PCC respectfully suggests that specific discussion of the reported "testimony" from faculty and staff about "an atmosphere of fear and retaliation" be removed from the draft report. Likewise, PCC suggests that the draft report be revised to instead cite the statistical facts provided about overall employee relations at the college.

If the reviewers still believe that the specific employee complaints received during the Focused Visit warrant inclusion, PCC respectfully suggests that the total number of

employees in question be specified and that they be noted as isolated examples of exceptions to, rather than as general evidence of, the overall state of employee relations at PCC.

Moreover, PCC respectfully suggests that the phrase “heard testimony from” by replaced with “conducted discussions with[.]”

6. On Page 4, Paragraph 3, Last Sentence - “Several Employees”

Error: It is an error of fact to refer generally to the number of individuals who “registered concerns” as “[s]everal employees” rather than specifying the exact number of employees who voiced those concerns to the HLC reviewers, particularly given the very small number of employees interviewed during the review.

Factual Basis: Use of the term “several” as an indefinite quantifier unfairly invites the inference that a larger number of employees raised the concerns in question than actually did. Given the contentious subject matter of these concerns, any implication that the number of employees reporting such issues is larger than what is specifically supported by the evidence is unfairly prejudicial to PCC and an error of fact.

Evidentiary Citation: The information available to PCC indicates that the HLC reviewers met individually and privately with likely not more than five employees. Even if each of the five voiced the same concern, and there is no suggestion that they all did, that would strain the lower boundary of what number might reasonably be characterized as “several” employees.

Suggested Correction: PCC respectfully suggests that the term “several” be replaced with the specific number of employees who expressed the concern in question. Alternatively, PCC suggests that the sentence beginning, “Several employees . . .” be omitted in its entirety.

7. On Page 4, Paragraph 3, Last Sentence - “More Stringent Standards” for Employees “Of Color”

Error: It is an error of fact to include in the draft report, without further explanation or examination, the unsupported allegation by an unspecified but presumably very small number of PCC employees that “in particular faculty and staff of color are held to more stringent standards than their majority counterparts.”

Factual Basis: Concerns, in and of themselves, are not facts. The draft report states, “Several employees registered concerns . . . that in particular faculty and staff of color are held to more stringent standards than their majority counterparts.” Notwithstanding the ambiguity of the term “several” (addressed above), the “concerns” of the employees in question are not supported by factual evidence or examined further in the draft report.

More specifically, the draft report does not indicate what "standards" the employees are referring to or explain why those standards are perceived as being "more stringent" in their application to employees of color. It appears that the reviewers accepted the subjective assertions of a small number of employees, without factual support or further inquiry, to make - or at least invite the inference of - a highly provocative, but ultimately unsubstantiated, factual conclusion about PCC's overeall treatment of employees of color.

On this issue, it is notable that of the fourteen PCC employees on the Executive Leadership Team (ELT), six members, including the Chancellor himself, are persons of color.[2] Moreover, statistical evidence compiled by PCC through empirical employee surveys does not support an allegation that "faculty and staff of color" are subjected to inequitable standards. Specifically, a 2022 survey conducted by PCC's Strategy, Analytics and Research Department (StAR) (cited below) found that more than 75% of PCC employees responded that they were "very satisfied," "satisfied," or "somewhat satisfied" that PCC "fosters an environment that is inclusive of diverse identities."

Evidentiary Citation: Please see PCC's Executive Leadership Team's page on the college's website; see also Exhibit 5, the College Employee Satisfaction Survey Results and Interpretive Guide – 2022.

Suggested Correction: PCC respectfully suggests the deletion of the sentence in question. Alternatively, PCC respectfully suggests the draft report clarify the following: 1) that the "concerns" expressed were the subjective opinions of a specific number of employees and not supported by specific facts, 2) that the review team did not conduct further investigation of these concerns, 3) that no factual evidence was provided to the review team that would support a finding that employees of color at Pima are unfairly held to higher performance standard, and 4) PCC provided empirical survey data that is contrary to the central premise of those allegations.

8. On Page 5, Bullet Point 4, Beginning "July 7, 2021", Regarding an "Employee Who Has Since Been Separated . . ."

Error: The statement "from a PCC employee who has since been separated from PCC" omits key facts, thereby misstating the circumstances underlying the employee's complaint.

Factual Basis: On April 29, 2021, the employee in question received a memorandum from the Chancellor with concerns about the employee's performance and conduct. On May 20, 2021, the employee was placed on paid administrative while the Chancellor's

[2] Please note that, throughout this document, references to the composition of ELT include one member who recently announced his departure from PCC but who, at the time of submission, is still a PCC employee and ELT member, as well as one member who was recently hired and whose effective start date at PCC is imminent but may be after HLC's receipt of PCC's submission.

concerns were addressed further. The employee subsequently received notice on June 29, 2021 that his last day of employment would be June 30, 2021, and his contract for the new fiscal year beginning July 1, 2021 was canceled.

Evidentiary Citation: Please see PCC's response to the June 30, 2021 complaint (previously submitted to HLC), pages 5-6 and Exhibits 27-29.

Suggested Correction: PCC submits that the sentence containing the statement noted above be replaced with the following:

> *The complaint, dated June 30, 2021 and containing 490 pages, was submitted by a PCC employee who had previously been placed on paid administrative leave following the employee's receipt of written notice of performance and conduct concerns. Following PCC's review of those concerns, the employee was subsequently notified that PCC was opting to cancel his employment contract.*

9. On Pages 5, Last Paragraph (Continuing on Page 6, First Paragraph) - Incorrect Statements About Allegations and Requests Regarding Outside Law Firms

Error: The August 4, 2021 "new complaint" submitted by "a member of the community representing a local advocacy group" did not allege a "lack of [Governing Board] input into selection of outside legal firms" nor did it make a "request for evidence of these firms' productivity."

Factual Basis: The cited portion of the draft report contains incorrect assertions that the August 4, 2021 complaint, submitted to HLC by Mario Gonzales – an active member of C-FAIRR and frequent vocal critic of PCC's administration – does not contain any allegations or statements about Board input on outside legal forms, nor does it request evidence about their productivity.

Evidentiary Citation: See August 4, 2021 complaint from Mario Gonzales (previously submitted to HLC).

Suggested Correction: PCC respectfully suggests deletion of the following text from the cited portion of draft report: ". . . lack of BOG input into selection of outside legal firms and a request for evidence of these firms' productivity."

10. On Page 6, First Paragraph, Lines 1-2, C-FAIRR'S "Concrete Recommendations" and "Report"

Error: The draft report mischaracterizes as "concrete recommendations" the unsupported opinions about and criticisms of PCC operations by a third-party "local community advocacy group" with no official connection to or operational knowledge of PCC's administration.

Factual Basis: The August 4, 2021 complaint to HLC, submitted by Mario Gonzales of C-FAIRR - a frequent and vocal critic of PCC's administration - contains the personal opinions of its author, who has no official connection to PCC or its administration and no personal knowledge of or involvement in PCC's operations. The allegations expressed in the August 4, 2021 complaint and the prior complaints attached to it (also from C-FAIRR and Mr. Gonzales), including the June 25, 2021 "report" in which the "recommendations" appear, are speculative criticisms unsupported by evidence.

Notably, the gravamen of C-FAIRR's August 4, 2021 complaint to HLC was the exceptional umbrage C-FAIRR apparently took when it was contacted by outside counsel for PCC attempting to investigate C-FAIRR's own allegations related to PCC's energy-management project, which Mr. Gonzales hyperbolically characterized as "*an attempt to stifle our first amendment rights*" (italics in original) that "[a]nyone fluent in English will understand . . . is a clear threat." (See August 4, 2021 "Formal Complaint," p. 1, par. 4). Equally notable is the fact that C-FAIRR's allegations related to the energy-management project have been repeatedly investigated and consistently found to be without merit. See*, e.g.*, the March 10, 2021 report by Susan Segal and the February 11, 2021 response from the Arizona Auditor General (cited below). As the reviewers and HLC themselves have stated, the PCC purchasing and contracting processes about which C-FAIRR and its supporters have complained so frequently and vociferously are "well-established" and "includ[e] milestones for seeking and receiving [Governing Board] approvals[,]" and, as the reviewers noted, the "[e]vidence demonstrates adequate progress" in this area (see Draft Report, p. 18, Section B4 ("Statement of Evidence")).

The draft report offers no evidentiary basis or other rationale as to why the reviewers decided to incorporate into their report, or to otherwise afford such deference to, the unsupported allegations and criticisms levied against PCC by C-FAIRR, a third-party group with no official connection to, direct knowledge of, or role in the administration of PCC. Accordingly, the draft report's mischaracterization of C-FAIRR's unsupported opinions and baseless allegations as "a set of concrete recommendations" and Mr. Gonzales's August 4, 2021 unsubstantiated complaint about PCC's outside counsel (along with its attachments) as a "report" are both errors of fact.

Additionally, it is an error of fact for the draft report to cite to and endorse these "recommendations" by C-FAIRR, an external third-party, when the review team itself "reached a decision not to request interviews with external third parties[,]" including this "local community advocacy organization" (*i.e.*, C-FAIRR) (see Draft Report, p. 6, paragraph 5). The draft report includes no evidentiary basis from which to conclude that the review team conducted any independent investigation of C-FAIRR, the credentials of its members (including Mr. Gonzales), the basis for or substance of its "recommendations," or other factors which might lend credibility to or undermine them, including discussing these matters with anyone from C-FAIRR itself.

Given the dubious nature of these "recommendations," C-FAIRR's adversarial position as a complainant against PCC in HLC matters, and the group's lack of any official connection to PCC, the draft report's suggestion that C-FAIRR's "recommendations" "warrant serious consideration" (Draft Report, p. 12, par. 1) seems incongruous, if not entirely at odds, with HLC accreditation criterion 2.C.4 that PCC's Governing Board "preserve its independence from undue influence on the part of . . . external parties."

Evidentiary Citation: Please see the August 4, 2021 complaint to HLC from Mario Gonzales and attached exhibits, including the June 25, 2021 "report" (previously provided); see also Exhibit 6, the March 10, 2021 report by Susan Segal of Gust Rosenfeld; Exhibit 4, the Arizona Auditor General's February 11, 2021 email declining to investigate the energy-management project.

Suggested Correction: PCC respectfully suggests deletion of the following sentence from the cited portion of the draft report: "The local community advocacy group offered a set of concrete recommendations for improving communication between PCC and the community in its report."

11. On Page 6, Paragraph 1, Lines 3-8, Description of Law Firm's Work

Error: The following sentences mischaracterize the work of the law firm retained by PCC and erroneously suggest that statements made by a third-party group (C-FAIRR) were made by the law firm:

> *A law firm, stating that it represented PCC in its ongoing efforts to investigate allegations raised by a local community advocacy group in the group's report, referenced failures of leadership by the governing board at PCC. The legal firm advised the community group that it had begun its investigation and asked for specific information and requested preservation of evidence.*

Factual Basis: The law firm in question, Farhang & Medcoff, was retained by PCC to investigate serious allegations made against PCC by C-FAIRR, which is the "local community advocacy group" in question. The law firm itself did not "reference[] failures of leadership by the governing board at PCC." Those supposed "failures" were, in fact, unsubstantiated allegations made by C-FAIRR, about which the law firm contacted C-FAIRR in an attempt to investigate the matter and discern if there was any factual basis for them. Notably, C-FAIRR responded extremely defensively when contacted by the law firm. Specifically, C-FAIRR's Chair, Mario Gonzales, complained to HLC about the firm's efforts to inquire about the factual basis for C-FAIRR's own allegations, hyperbolically characterizing the firm's inquiry as "*an attempt to stifle* [C-FAIRR's] *first amendment rights*" (italics in original) that "[a]nyone fluent in English will understand . . . is a clear threat." PCC's attorney also received a letter from C-FAIRR's legal counsel informing him that C-FAIRR "decline[d] [PCC's] request/threat/demand to assist in [the]

investigation." As such, the draft report errs in suggesting that the law firm itself "referenced" C-FAIRR's unsubstantiated allegations as fact.

Evidentiary Citation: Please see Exhibit 7, Farhang & Medcoff's July 20, 2021 letter to C-FAIRR and August 3, 2021 response letter from Lawrence Y. Gee to Tim Medcoff; see also C-FAIRR and Mario Gonzales's August 4-5, 2021 complaints to HLC (previously provided).

Suggested Correction: PCC respectfully suggests the following revision to the text quoted above:

> *An outside law firm was retained by PCC to investigate the allegations made by C-FAIRR about certain actions of PCC's Governing Board. The law firm contacted C-FAIRR and advised its leadership that the firm was investigating the group's allegations. As part of that investigation, the law firm requested specific information from C-FAIRR about its allegations and additionally requested that C-FAIRR preserve certain evidence. In response, C-FAIRR refused to assist in the investigation and complained to HLC about the law firm's efforts to investigate C-FAIRR's allegations.*

12. On Page 6, Paragraph 1, Last Sentence, Beginning "The Other Complaint . . ."

Error: The draft report incorrectly states that a complaint alleging violations of HLC criteria was submitted by "a member of" PCC's Governing Board. The complaint in question was actually submitted by two Board members.

Factual Basis: The August 18, 2021 complaint referenced in the above-cited portion of the draft report was submitted by two members of PCC's Governing Board: Maria Garcia and Luis Gonzales.

Evidentiary Citation: Please see the August 18, 2021 complaint to HLC by Maria Garcia and Luis Gonzales (previously submitted).

Suggested Correction: PCC respectfully suggests replacing the above-cited text with the following:

> *The other complaint was filed on August 18, 2021 by two PCC Governing Board members, Maria Garcia and Luis Gonzales, alleging violations of HLC's accreditation criteria and ongoing general dysfunction within the Governing Board.*

13. On Page 6, Third Full Bullet Point, Lines 10-12, Beginning, "The Complaint Expressed Frustration . . ."

Error: The current phrasing of the draft report mischaracterizes, and appears to adopt, unsupported allegations made in a complaint as factual evidence and incorrectly suggests that the Board Chair and Chancellor had a duty to intervene in an individual personnel matter.

Factual Basis: The March 10, 2022 complaint in question contains allegations against PCC, including a supposed "lack of institutional action" and a "fail[ure] to intercede" by the Board Chair and the Chancellor. Allegations are not, in and of themselves, facts, and the draft report erred in mischaracterizing the alleged "lack of institutional action" as though it were a demonstrable fact. Likewise, the draft report erroneously states as fact the unsupported allegation that the Board Chair and the Chancellor "both failed to intercede" in a personnel matter. In actuality, neither the Board Chair nor the Chancellor has a duty to "intercede" personally in individual personnel matters, and it would be in contravention of PCC policy for them to do so.

Evidentiary Citation: Please see the March 10, 2022 complain (previously provided)t; see also PCC Governing Board Bylaws, Article XII, Section 3.1; PCC Employee Handbook, Section "Complaints".

Suggested Revision: PCC respectfully suggests that the above-cited text be revised as follows:

> *The complaint expressed frustration with an alleged lack of institutional action by PCC's administration.*

14. On Pages 6 (Last Paragraph) and 7 (First Paragraph), Regarding "Executive Session" and Number of Attendees at the March 28, 2022 Meeting with the Governing Board

Error: The draft report incorrectly states that the March 28, 2022 meeting between the HLC reviewers and PCC's Governing Board, the entirety of which was open to the public, "moved to executive session to secure candid comments." The draft report further suggests there was something improper with the number of PCC personnel and others who attended the March 28th meeting. The draft report also states, without elaborating or citing supporting examples, that the number of attendees "appeared to have a stifling impact on conversation" and "impacted deliberations."

Factual Basis: The March 28, 2022 meeting was noticed as a public meeting and, like most Governing Board meetings, was, pursuant to state law, open to anyone who wanted to attend. Contrary to statements made in the draft report, there was no vote or motion to enter "executive session," which has a very limited scope and requires a

specific vote per Arizona law (see A.R.S. 38-431.03 ("Executive sessions; definitions"), and none was scheduled on the agenda. As the draft report indicates, it was explained to the HLC reviewers at the time that the Governing Board's public meetings are normally attended by members of PCC's leadership team. The draft report incorrectly states that the meeting was an "executive session" and improperly suggests that it should have been closed to the public and PCC personnel. This is incorrect as a matter of state law (see *id.*). Likewise, the draft report offers no specific examples to support its conclusion that the attendance of these individuals "impacted deliberations" or "stifl[ed] conversation."

Evidentiary Citation: Please see the publicly posted March 28, 2022 meeting agenda and minutes; see also see A.R.S. 38-431.03.

Suggested Correction: Given that they are based on the factually and legally incorrect premise that the March 28, 2022 meeting was supposed to include an "executive session" and be closed to most PCC personnel and to the public, PCC respectfully suggests that the first and second full paragraphs on Page 7 be deleted from the draft report.

In the alternative, PCC suggests replacing the specified paragraphs with the following:

> *On March 28, 2022, the review team met individually with each member of PCC's Governing Board. The team subsequently met with the entire Board in an open public meeting, agendized and conducted in accordance with the applicable state law, which was also attended by various PCC employees and members of the public.*

15. On Page 7, Section 5, Interaction with "Institutional Constituencies"

Error: The draft report incorrectly includes PCC's "Executive Leadership Team" (ELT) as an "institutional constituency" with which the review team "interacted".

Factual Basis: The review team only met with ELT to explain the review process. It had no substantive discussions or other interactions with members of ELT as a group.

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests that the specified portion of the draft report be revised as follows: "Executive Leadership Team (10) (Explanation of the review process only; no substantive discussion of specific review topics)"

16. On Page 11, First Full Bullet Point, Lines 3-7 Regarding "3-2 Votes" and Lines 10-11, Beginning "A couple of Board Members Expressed Their Frustration . . ."

Error: In Lines 3-7, the draft report errs in presenting "a number of '3-2' votes on major policy issues" as particularly worrisome or unusual. There is no evidence that this is the case. As a Board Member informed the review team, the vast majority of PCC's Governing Board's votes are unanimous.

In lines 10-11, the wording of the sentence in question presents the personal feelings of two Board members as fact when there is no evidence to justify their individual perceptions or to substantiate their allegations that other PCC actors treated these two Board members disrespectfully.

Factual Basis: The draft report states that "[a] couple of Board members expressed their frustration at the level of disrespect received from the Chancellor, Executive Leadership Team members, and fellow Board members." The wording of this sentence creates the erroneous impression that the "level of disrespect" alleged by these two Board members is demonstrable and based on objective evidence when, in fact, it is unsubstantiated by any evidence or specific examples.

Evidentiary Citation: N/A (misleading phrasing)

Suggested Correction: PCC respectfully suggests that the specified sentence be amended as follows:

> *Two Board members expressed frustration at what they perceived to be disrespectful conduct toward them by the Chancellor, the Executive Leadership Team, and their fellow Board members*.

17. On Page 11, First Full Bullet Point, Last Sentence, Beginning "Thus, It is the Team's View . . ." (Error 1 of 3)

Error: Inclusion of unnecessary word - "is"

Factual Basis: There appears to be a typographical error in the cited sentence, specifically an unnecessary "is" between "mission" and "to".

Evidentiary Citation: N/A (typographical error)

Suggested Correction: PCC respectfully suggests deletion of the unnecessary word ("is").

18. On Page 11, First Full Bullet Point, Last Sentence, Beginning "Thus, It is the Team's View . . ." (Error 2 of 3)

Error: The cited portion of the draft report makes a broad, highly consequential conclusion about PCC's capacity to perform its fundamental educational mission based on incomplete information and the unsupported "frustration[s]" of two Board members, while, at the same time, omitting specific evidence of impropriety on the part of those same two Board members that directly addresses the issues under review.

Factual Basis: The stated basis for the review team's conclusion "that the College's mission [] to provide the best educational setting for the citizens of Pima County is at risk" omits material facts concerning two Board members' well-documented and repeated failures to follow applicable state law, refusal to meet with the Chancellor, and failure to follow the Board's own policies, bylaws, and legal responsibilities.

Evidentiary Citation: PCC and three Board members submitted specific evidence documenting the improper actions of the two Board members in question, Maria Garcia and Luis Gonzales, to HLC prior to the Focused Visit; see also Exhibit 1 (August 14, 2022 opinion of the Arizona Attorney General finding Maria Garcia and Luis Gonzales in violation of state Open Meetings Law)

Suggested Correction: PCC respectfully suggests that the third full bullet point on page 11 be amended to include the factual evidence previously submitted to HLC about the failures and improper actions of Board members Maria Garcia and Luis Gonzales, and to address the impact of their failures and actions on the issues noted by the review team.

Alternatively or additionally, PCC respectfully submits the deletion of the final sentence of this bullet point, specifically the following: "Thus it is the team's view that the College's mission is [*sic*] to provide the best educational setting for the citizens of Pima County is at risk."

19. On Page 11, First Full Bullet Point, Last Sentence, Beginning "Thus, It is the Team's View . . ." (Error 3 of 3)

Error: In its entirety, the conclusory sentence, "Thus, it is the team's view that the College's mission [] to provide the best educational setting for the citizens of Pima County is at risk[,]" is unsupported by factual evidence, and its inclusion in the draft report, is a factual error.

Factual Basis: As stated in the language of the draft report itself, the cited statement by the review team is supported only by a "sentiment expressed" by "a couple of Board members" about "some Board members[.]" The subjective sentiments and personal feelings of two Board members about their fellow Board members are not facts and do

not provide a sufficient basis to reach a sweeping conclusion about an existential threat to PCC's fundamental educational mission.

Contrary to the draft report's unsupported conclusion, and regardless of how two Board members might feel about their peers, substantial factual evidence is readily available to demonstrate that PCC is currently succeeding and excelling in its mission to provide the best educational setting for the citizens of Pima County. As the HLC is certainly aware, under this Chancellor and through the outstanding efforts of this administration, PCC has emerged from being an institution on probation and is now in good standing with HLC. Moreover, throughout this same period, PCC has been nominated for and received numerous national "Bellwether" awards for its innovative, pioneering programs. Likewise, multiple PCC administrators have been selected as fellows by the Aspen Institute and participated in its intensive leadership programs.

Examples like these, and many others that PCC could provide upon request, illustrate that there is no "risk" to PCC's fulfillment of its fundamental educational mission, despite the low opinion of two Board members for some of their colleagues. Accordingly, the draft report's inclusion of this sweeping, unsupported conclusion, which is contradicted by information already known by or readily available to the HLC, was an error of fact and should be deleted.

Evidentiary Citation: N/A - The highly subjective nature of the sentiments upon which the review team based its conclusion in question is evident from the text of the draft report.

Suggested Correction: PCC respectfully suggests the deletion of the final sentence of this bullet point, specifically, "Thus it is the team's view that the College's mission is [*sic*] to provide the best educational setting for the citizens of Pima County is at risk."

20. On Page 12, First Partial Bullet Point, Lines 6-23, Beginning "In Addition, the Team Found that the Local Community Advocacy Group C-FAIRR . . ."

Error: The second half of the cited bullet point regarding "recommendations" "offered" to PCC by C-FAIRR "in its August 4, 2021 complaint filed with the HLC" contains statements that are factually unsupported, omit relevant evidence, do not merit inclusion in the draft report or the high degree of unexplained deference apparently afforded to them and to C-FAIRR by the review team, and do not support the reviewers' conclusion that they "warrant serious consideration."

Factual Basis: It is axiomatic that a complaint itself is not evidence. Yet, the draft report cites large portions of C-FAIRR's August 4, 2021 complaint and the previous complaints attached to it as though they were. No factual justification is offered for this inclusion or for the deference the review team has afforded to C-FAIRR on matters of PCC's governance, particularly since the reviewers themselves state that they "reached a

decision not to request interviews with external parties" including "representatives of a local community advocacy group" (*i.e.*, C-FAIRR) (see Draft Report, p. 6, par. 5, lines 2-5). Omitted from the draft report is the fact that C-FAIRR is an external third-party organization, unaffiliated in any way with PCC but politically aligned with Board members Maria Garica and Luis Gonzales. It is well known for its frequent, vociferous, and generally hyperbolic criticisms of and unsupported complaints against PCC's administration, in particular Chancellor Lee Lambert.

There is no factual basis upon which to conclude that C-FAIRR or anyone associated with it has any meaningful knowledge of or expertise in higher-education administration or board governance. Accordingly, there is no factual basis to justify the apparent high degree of deference given to C-FAIRR by the reviewers – representatives of the Higher Learning Commission – or to warrant the inclusion in the draft report of the "five recommendations" C-FAIRR included in its August 4, 2021 complaint to the HLC. These "recommendations" are, in effect, only the unsubstantiated personal opinions of individuals with no official association with or institutional knowledge of PCC, no demonstrable knowledge of or experience with effectively operating a college or administering a governing board, and a lengthy history of making specious, unfounded, complaints against PCC, its Governing Board, and its administrators that are routinely dismissed.

PCC is a public institution, and its Governing Board is composed of democratically elected members. While opinions from a "local community advocacy group," just like those of other concerned voters and constituents, may merit consideration in another forum, they are not factually relevant to fundamental questions of PCC's accreditation and do not belong in the HLC review team's draft report.

Evidentiary Citation: Please see Exhibit 2, The State Bar of Arizona's Dismissal of Luis Gonzales's October 12, 2021 Charge Against PCC General Counsel Jeff Silvyn (December 12, 2021); Exhibit 3, Arizona Attorney General's Criminal Division's March 30, 2021 Letter Declining to Investigate Sally Anne Gonzales's March 15, 2021 Complaint; Exhibit 4, Arizona Auditor General's February 11, 2021 Email Declining Maria Garcia's January 14, 2021 Request for an Audit.

Suggested Correction: PCC respectfully suggests the deletion from the draft report of text from the cited bullet point, beginning with, "In addition, the team found that the local community group C-FAIRR" through the end of the cited bullet point.

21. On Page 12, First Full Bullet Point, Line 11, "Open Meeting Law Stipulations"

Error: The cited portion of the draft report incorrectly refers to the legal requirements of Arizona's statutory Open Meetings Law as "stipulations".

Factual Basis: The requirements of Arizona's Open Meetings Law are established by state statute. As such, the draft report's use of the term "stipulation" in this context is incorrect, as the applicable Open Meetings Law requirements are not subject to, nor can they be modified by, stipulations by public bodies, including PCC's Governing Board.

Evidentiary Citation: N/A (word choice); please see also A.R.S. 38-431, *et seq*.

Suggested Correction: In line 11 of the cited bullet point, replace "Open Meeting Law stipulations" with "state Open Meetings Law statutory requirements[.]"

22. On Pages 12, Last Bullet Point, Lines 7-8, Beginning "Receives and Adjudicates All Complaints . . ."

Error: The statement that the Governing Board Chair "adjudicates all complaints made against the Chancellor or other Board members" is factually incorrect. The Governing Board Chair receives notice of but does not adjudicate complaints against the Chancellor or other Board members. Responsibility for addressing such complaints is vested in the Board as a whole, which does not perform a specific adjudicative function.

Factual Basis: Per the Board's bylaws, the Board Chair receives notice of complaints against the Chancellor or a Board member, but how to address such complaints is determined by the Board as a whole, rather than "adjudicated" by the Board Chair. How the Board addresses such complaints is determined on a case-by-case basis, but the Board's bylaws do not provide for a specific adjudicative process.

Evidentiary Citation: Please see the PCC Governing Board Bylaws, Article XII, Section 3.

Suggested Correction: PCC respectfully suggests that the term "adjudicates" be deleted from the cited sentence, and that the phrase "which are addressed by the Board as whole" be inserted after "complaints made against the Chancellor or other Board members," and before "working with the General Counsel."

23. On Page 13, First Paragraph, Lines 1-7, Regarding Selection of Governing Board Officers (Omission of Attorney General Opinion)

Error: The draft report errs in citing as evidence the "concern" expressed by "two Board members" that the Governing Board's "majority vote" election process "has been used against them to deny them the opportunity to serve in the coveted role of Board Chair[.]" The draft report further errs in omitting from its discussion on this point the 2021 Opinion of the Arizona Attorney General stating that the Board's practice for electing its officers was consistent with applicable state law.

Factual Basis: Two Board members' personal umbrage at not being selected for a "coveted role" is ultimately irrelevant to the purpose of HLC's visit, and it is certainly not "[e]vidence" that "demonstrates that monitoring is required" (see Draft Report, p. 10). Likewise, it is not the appropriate role of the review team to opine if one acceptable approach to Board governance is better or worse than another, and it is certainly not an issue upon which to decide PCC's accreditation. Rather, the pertinent question, for HLC's purposes, is whether the Board's bylaws and practices are "in compliance at all times with all applicable laws[.]" (See HLC's Assumed Practices, Section A ("Integrity: Ethical and Responsible Conduct"), subsection 10). The Arizona Attorney General has already answered that question in a June 3, 2021 Opinion concurring with PCC's General Counsel's interpretation of the applicable statute and finding that the Board's "elections for officers . . . are permissible under [state law]." PCC respectfully submits that the state Attorney General, rather than individual Board members or the reviewers, is the appropriate authority to decide which Board practices do or do not comply with applicable state law. As such, it was a factual error to include as "evidence" in the draft report the "concern[s]" of two Board members and the opinions of the review team on this issue.

Evidentiary Citation: Please see Arizona Revised Statute (A.R.S.) 15-1443; see also Exhibit 8, June 3, 2021 Arizona Attorney General Opinion No. I21-005.

Suggested Revision: PCC respectfully suggests that the first three full sentences on page 13, beginning with "Current bylaws state" and ending with "a '3-2' vote" be deleted and replaced with the following:

> *Provisions of the current bylaws governing the election of Board officers have been recently reviewed by the Arizona Attorney General who confirmed that they are in compliance with applicable state law, which is sufficient to satisfy the HLC's related accreditation requirements.*

24. On Page 13, First Paragraph, Lines 7-9, Beginning "The Two Members Cited . . ."

Error: Use of the term "cited" in the specified portion of the draft report is factually incorrect, as the statements in question are unsubstantiated allegations, rather than citable facts. The draft report also errs in its omission of material, verifiable information that contradicts these allegations.

Factual Basis: The sentence, "The two members cited that the lack of a meaningful opportunity to work closely and productively with the Chancellor is detrimental to the College[,]" contains material errors and omissions of fact. First, use of the term "cited" in this context is incorrect, given that the statements of two Board Members in question, Maria Garcia and Luis Gonzales, are unsubstantiated allegations that cannot be cited as fact. Second, the unsupported allegation that Board Members Garcia and Gonzales are not afforded a meaningful opportunity to work closely and productively with the

Chancellor is demonstrably false. Specific factual evidence not included in the draft report, but available or known to the review team, shows that the Chancellor has extended multiple invitations to both Ms. Garcia and Mr. Gonzales to meet and work with him (the Chancellor) to address whatever concerns they may have. However, both Ms. Garcia and Mr. Gonzales have consistently and steadfastly refused to do so.

In fact, it is noted specifically in the minutes of the March 28, 2022 Governing Board Special Meeting, which was attended by the review team, that Ms. Garcia publicly acknowledged that she does indeed have "equal access to speak to the Chancellor" (see citation below). Moreover, during a March 14, 2022 meeting with Mary Ellen Simonson of Lewis Roca, an outside consultant hired by PCC to assist the Board in reviewing its bylaws, "Ms. Garcia stated that she does not understand why she needs to meet with [the Chancellor] alone unless she has something she specifically wants to talk to him about." As such, it is factually incorrect for the draft report to characterize Board Members Garcia's and Gonzales's refusal to meet with the Chancellor as evidencing a "lack of a meaningful opportunity to work closely and productively" with him. The opportunity is clearly there; Ms. Garcia and Mr. Gonzales simply refuse to avail themselves of it.

Evidentiary Citation: Please see Exhibit 9, Minutes, PCC Governing Board Special Meeting, March 28, 2022, p. 4, par 2 (stating, "Board member Garcia asked to comment about having equal access to speak to the Chancellor; she agreed that they do"); see also Exhibit 10, March 14, 2022 Lewis Roca Memorandum, p. 4, par. 3.

Suggested Correction: PCC respectfully suggests the cited sentence be replaced with the following:

> *The two Board members, Maria Garcia and Luis Gonzales, alleged that they have not been afforded a meaningful opportunity to work closely and productively with the Chancellor. This allegation is contradicted by factual evidence demonstrating that the Chancellor has extended multiple invitations to both Ms. Garcia and Mr. Gonzales to meet and address their concerns, all of which Ms. Garcia and Mr. Gonzales have declined. Notably, Ms. Garcia herself acknowledged on the record at the March 28, 2022 public Governing Board meeting, which was attended by the review team, that she has the same access to the Chancellor as her fellow Board members.*

25. On Page 13, First Full Bullet Point, Paragraph 2, First Sentence, "Conflicting Evidence"

Error: The draft report mischaracterizes factual evidence presented by PCC as "conflicting" with "what the focused team heard onsite" but does not explain the perceived conflict or point to examples of conflicting evidence.

Factual Basis: As noted in the draft report, PCC presented evidence of two Board members, Maria Garcia and Luis Gonzales, engaging in conduct that is not PCC's best interests. Although the draft report states that this evidence conflicted with what the review team "heard onsite" during its visit, the report does not describe or explain that perceived conflict or offer factual evidence of different or conflicting evidence that the review team received during the Focused Visit. Accordingly, there is no factual basis upon which to conclude that the cited evidence presented by PCC was "conflicting" or otherwise inconsistent with any information presented to or received by the review team during the Focused Visit.

Evidentiary Citation: N/A (lack of factual support for "conflicting" characterization)

Suggested Correction: PCC respectfully suggests deletion of the following sentence: "Yet the College's Report for a Focused Visit submitted to the Higher Learning Commission presented conflicting evidence to what the focused visit team heard onsite."

26. On Page 13, First Full Bullet Point, Paragraph 2, "Alleged" Examples of Two Board Members Not Acting in PCC's Best Interests

Error: The three cited examples of "two Board members" not acting "in the best interest of [PCC]" are not "alleged," as currently characterized in the draft report. Rather, they are established facts, demonstrated by evidence previously submitted by PCC.

Factual Basis: It is established as fact, rather than being simply "alleged," that Board Members Maria Garcia and Luis Gonzales engaged in the three examples of conduct included in the draft report as examples of Board members not acting in PCC's best interests. Namely, the review team noted the following: 1) Maria Garcia and Luis Gonzales refusing to provide letters of support for a ballot initiative that they had previously voted to approve; 2) Maria Garcia and Luis Gonzales accusing the Chancellor of a conflict of interest but failing to provide any evidence to support that extremely serious allegation, and 3) Maria Garcia and Luis Gonzales violating the state's Open Meetings Law.

Notably, Open Meetings Law violations, as well as the disclosure of confidential governmental information, are very serious matters under Arizona law, and knowing violations may result in removal from office, forfeiture of employment, civil penalties, and/or misdemeanor and felony criminal convictions.

Evidentiary Citation: Please see Exhibit 11, Susan Segal's Memorandum re "Unmdl" (September 25, 2020); Exhibit 6, Susan Segal's March 10, 2021 Report re PCC's Energy Management Project; Exhibit 1, Arizona Attorney General's Opinion Finding Maria Garcia and Luis Gonzales in Violation of State Open Meetings Law (April 14, 2022); Exhibit 4, Email from the Arizona Auditor General's Office Declining Maria Garcia

and Luis Gonzales's Request to Review the Energy Management Project (February 11, 2021); Arizona Revised Statute (A.R.S.) 38-431.07; A.R.S. 38-504; A.R.S. 38-510.

Suggested Correction: PCC respectfully suggests the second paragraph of the first full bullet point be revised as follows:

> *The Report cited three examples in which two Board members, Maria Garcia and Luis Gonzales, engaged in conduct that is not in the best interests of PCC. Their misconduct included 1) refusing to provide letters of support to a ballot initiative that they had previously voted to approve, 2) making unsupported accusations against the Chancellor of having a conflict of interest in the awarding of a PCC contract, and 3) violating the state's Open Meetings Law on multiple occasions.*

27. On Page 14, Lines 3-4, Regarding a Purportedly "Pervasive" "'Them' Versus 'Us' Viewpoint"

Error: There is an insufficient factual basis to support the draft report's broadly negative conclusion that an antagonistic "'them' versus 'us' viewpoint" is "pervasive" at PCC.

Factual Basis: The draft report references two observations involving two very small groups of PCC actors that the reviewers characterize as displaying a "'we' versus 'them' attitude" or a "'them' versus 'us' viewpoint": 1) the "attitude expressed by members of the Executive Leadership Team (ELT) when discussing the state of Board affairs, and 2) that Board decisions are not always unanimous, and a number of votes on important matters were split 3 to 2. Including the Chancellor, there are fourteen PCC employees on ELT, and there are only five members of PCC's Governing Board. Regardless of their conduct, it is an error of fact to conclude from observations of, at most, nineteen people, out of nearly 2,000 employees (plus five Board members), that a "'them' versus 'us' viewpoint" is "pervasive" at PCC.

The reviewers' limited anecdotal observations of a very small number of PCC actors are also inconsistent with the empirical results of PCC's college-wide 2022 survey, which found that more than 60% of employees were "very satisfied", "satisfied", or "somewhat satisfied" that "[t]here is a spirit of teamwork and cooperation" at PCC.

Similar results were recently seen in a separate survey conducted by the Pima Community College Education Association (PCCEA). PCCEA is an employee representative organization of PCC faculty that is not officially part of the college, and its survey was not conducted by PCC, nor were its methodology or results verified by the college. Nonetheless, the reported results indicate consistently high levels of respect for and confidence in PCC's executive administrators, with nearly 60% of faculty responding that the Chancellor's leadership "meets," "exceeds," or "consistently exceeds" their expectations, and over 70% of faculty expressed the same sentiments about the Provost. Likewise, at least 50% and, in some instances, over 80% of survey

respondents stated that the Chancellor and/or the Provost met, exceeded, or consistently exceeded their expectations in “Reliability,” “Communication,” “Integrity,” and “Conflict Resolution.”

Evidentiary Citation: Please see the Draft Report, pp. 10-14; see also Exhibit 5, PCC’s College Employee Satisfaction Survey – 2022 (“Main Results”); see also the Executive Leadership Team page on PCC’s website; see also Exhibit 12, PCCEA’s “Faculty Evaluation of Administration – Spring 2021”.

Suggested Correction: PCC respectfully suggests deletion of the following sentence from the cited portion of the draft report: “Such an approach would only reinforce the “them” versus “us” viewpoint that is pervasive at the College.”

28. On Page 14, “A2. Statement of Focus,” First Bold-Type Section, Beginning “The Independence of the Outside Legal Firm . . .”

Error: There is a missing word, “of”, between “lack thereof” and “current Board members”.

Factual Basis: N/A (typographical error)

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests insertion of the word “of” between “thereof” and “current”, as noted above.

29. On Page 14, Section B2, Subsection “Evidence,” First Bullet Point, Line 7, Misspelling of “Legal Counsel”

Error: “Outside legal counsel” is misspelled as “outside legal council”.

Factual Basis: N/A

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests replacing “council” with “counsel”.

30. On Page 14, Section B2, Subsection “Evidence,” First Bullet Point, Line 13, Typographical Error (“Board” versus “Board’s”)

Error: The phrase “reflecting the board use of individual firms” should be capitalized and include the possessive “‘s”,

Factual Basis: N/A

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully requests revising the sentence containing the cited typographical error as follows:

> *A total of ten different firms were contracted for various legal services, reflecting the Board's use of individual firms in the Pima County community.*

31. On Page 14, Section B2, Subsection "Evidence", First Bullet Point, Line 19, Typographical Error ("All Allegation [*sic*] of Conflict of Interest")

Error: The word "allegation" in the cited sentence should be the plural form, "allegations".

Factual Basis: N/A

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests revising "all allegation of conflict of interest" to "all allegations of conflict of interest[.]"

32. On Page 15, First Full Bullet Point, Line 4, Typographical Error - Omitted Word ("Related [to] the Awarding of . . .")

Error: The cited line of the draft report is missing the word "to" between "related" and "the awarding of".

Factual Basis: N/A

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests that the word "to" be inserted in the above-cited line between the "related" and "the awarding of[.]"

33. On Page 15, First Full Bullet Point Regarding June 30, 2021 Complaint to HLC "Questioning the Independence" of Outside Counsel

Error: The cited portion of the draft report omits the fact that no evidentiary basis was presented upon which to conclude that the outside counsel retained by PCC to review the matter in question lacked sufficient independence.

Factual Basis: The outside counsel in question, Susan Segal with the law firm of Gust Rosenfeld PLC, is a highly experienced and well-respected attorney whose *bona fides*

speak for themselves. Any suggestion that Ms. Segal "lacked sufficient independence" in her performance of the impartial legal work for which she was retained by PCC is entirely unsubstantiated and unfair to Ms. Segal, and the inclusion in the draft report of unfounded skepticism about her impartiality is an error of fact.

Evidentiary Citation: Please see the profile of Susan Segal published on her law firm's website.

Suggested Correction: PCC respectfully suggests adding the following sentence to the end of the cited paragraph:

> *No factual evidence was presented to HLC supporting the allegation that the outside legal counsel in question lacked sufficient independence.*

34. On Page 15, Second Bullet Point, Regarding Complaint to the State Bar of Arizona

Errors: The draft report's summation of the complaint made by Board Member Luis Gonzales to the State Bar of Arizona against PCC's General Counsel contains several errors of fact and material omissions, which are addressed below.

Factual Basis: 1) The complaint to the State Bar of Arizona in question was dated October 12, 2021, rather than March 12, 2022; 2) the correct name of the responsible agency is the "State Bar of Arizona," rather than the "Arizona Bar Association"; 3) the complaint was submitted and signed by one current Board member, Luis Gonzales, rather than "by two sitting Board members"; 4) the draft report omits the material fact that the State Bar dismissed the complaint, and notified Mr. Gonzales of that dismissal, on or before December 22, 2021; 5) the draft report omits the material fact that a copy of the dismissal letter was provided to the reviewers at their request; 6) the draft report omits the material fact that Mr. Gonzales was informed by the State Bar that his complaint had been dismissed approximately three months before Mr. Gonzales sent it to HLC, knowingly failing to disclose to HLC that he already knew his complaint had been dismissed; 7) AP 6.01.01 is an "Administrative Procedure" rather than a "Board Policy".

Evidentiary Citation: Please see Exhibit 2, the State Bar of Arizona's Dismissal of Luis Gonzales's Complaint against PCC General Counsel Jeff Silvyn (December 22, 2021); *Administrative Procedure 6.01.01*

Suggested Correction: PCC respectfully suggests the above-cited bullet point be revised as follows:

> *The review team was notified of two additional complaints received by HLC on March 18, 2021 alleging violations by PCC's General Counsel and were provided a copy of a complaint dated October 12, 2021 that was made against the General Counsel with the State Bar of Arizona by one of the current Board*

members, Luis Gonzales. Board Member Gonzales knowingly failed to disclose to HLC that the State Bar of Arizona had dismissed his complaint against the General Counsel on or before December 22, 2021, approximately three months before the underlying complaint was forwarded to HLC. All allegations of misconduct against the General Counsel were dismissed by the State Bar of Arizona. Much of the apparent disagreement seems to focus on the Board's role in hiring outside legal counsel and perceptions of who the General Counsel reports to and represents. The team interviewed the General Counsel, who was aware of the complaints with the State Bar of Arizona, but was not aware that those complaints had been forwarded to the HLC by Mr. Gonzales. The General Counsel stated that the role of the General Counsel included advising on policy compliance and risk management. In terms of reporting, the General Counsel clarified that the General Counsel is an employee of the Pima County Community College District and functions within the authority specific to a particular matter. For example, the General Counsel stated that the General Counsel reports to the Chancellor in situations dealing with issues that have been delegated by the Board to the Chancellor and reports to the Board on issues that have not been delegated to the Chancellor. In terms of hiring outside legal counsel, PCC's Administrative Procedure (AP) 6.01.01 directs that all requests for legal services be forwarded to the General Counsel who is authorized to obtain outside legal assistance after consulting with the Chancellor.

35. On Page 16, Section "Evidence," First Bullet Point, Line 6, Information Regarding PCC's Staffing of Human Resources Department

Error: In addition to the Assistant Vice Chancellor for Human Resources (HR), PCC's HR department is staffed twenty-two (22) employees, rather than "two" (2) as stated in the draft report.

Factual Basis: N/A (possibly a typographical error)

Evidentiary Citation: Please see Exhibit 13, PCC's attached Organization Chart - May 13, 2022, pages 19-24.

Suggested Correction: PCC respectfully suggests changing "staff of two individuals" to read "staff of twenty-two individuals[.]"

36. On Page 16, Section "Evidence," Second Bullet Point, Line 7, Regarding the General Counsel's Role on the Human Resources Advisory Committee

Error: The draft report omits that the General Counsel serves on the Human Resources Advisory Committee in a "non-voting" *ex officio* capacity.

Factual Basis: The draft report's description of the General Counsel's (GC) *ex officio* role on the PCC Governing Board's Human Resources Advisory Committee omits that the GC serves on that committee in a non-voting capacity.

Evidentiary Citation: Please see the PCC Governing Board's Human Resources Advisory Committee's Charter, page 1, "Composition".

Suggested Correction: PCC respectfully suggests inserting "and non-voting" between "ex-officio" and "capacity."

37. On Page 17, First Bullet Point, Line 1 - "A Number of Positive Comments"

Error: The draft report notes, but does not describe or address, the "number of positive comments" that "the focused visit team heard[.]" In contrast, the draft report discusses numerous negative comments in detail.

Factual Basis: The draft report lists four subparts to this particular bullet point which contain detailed discussions of negative comments **"**about progress the governing board and senior administration has made" since the HLC's 2013 fact-finding visit. Without providing an evidentiary foundation or other explanation, the review team characterizes these negative comments as being "representative of the discontent that was shared with the team during the visit." In contrast, the review team only notes, but does not discuss at all, the "number of positive comments" it received about the same subject. The draft report errs in accepting as fact and discussing in detail numerous negative "comments" it received while disregarding entirely the "number of positive comments" it also received. Skewing the review team's analysis in this way is an error of fact and of methodology, in that it unfairly assigns significant evidentiary value to negative comments and apparently no value whatsoever to the other comments that the team acknowledges were positive. Arguably, the draft report leaves the distinct impression that, unless a comment was negative, it was not worth hearing.

Evidentiary Citation: N/A (the "positive comments" noted in the draft report were not provided to PCC)

Suggested Correction: PCC respectfully suggests that either 1) the draft report be revised to include an equally thorough and detailed discussion of the positive comments received by the review team on this subject matter, or 2) the four subparts under the cited bullet point, in which the negative comments are discussed in detail, be deleted.

38. On Page 17, First Bullet Point, Four Subparts - Unsubstantiated Allegations and Unsupported Complaints are not "Evidence"

Error: The draft report errs in including and characterizing as "evidence" four detailed subparts under the cited bullet point, which consist entirely of "comments," opinions,

personal feelings, unsupported complaints (including one from two years ago), and unsubstantiated allegations about discrete, employee-specific personnel matters.

Factual Basis: As stated previously, it is axiomatic that complaints and allegations are not evidence, nor are unsupported feelings, opinions, or comments. More specifically, the fact that someone expressed an opinion or a feeling, submitted a complaint, voiced a comment, or made an allegation is not, itself, evidence that the feeling, opinion, or comment has some basis in fact or that the gravamen of the complaint or allegation actually occurred, let alone that it implicates accreditation standards.

Complaints and allegations require factual proof, and feelings, opinions, and comments unsupported by evidence are just that - feelings, opinions, and comments. Here, no such factual proof is cited in this section of the draft report. To characterize as "evidence" and, ultimately, rely upon multiple unsubstantiated allegations, comments, subjective opinions and feelings, and unsupported complaints as "evidence" in making a fundamental determination about the overall state of employee relations at PCC is methodologically incorrect and an error of fact.

Moreover, each of the matters described in the second, third, and fourth subparts relates to a discrete, employee-specific personnel matter. The scope of the HLC's focused visit, as it pertains to employment matters, is not nearly so specific, and the review team's directive does not include acting as *ad hoc* human resources specialists, investigating particular complaints made by or about individual PCC employees. Rather, the review team is tasked with examining the Board's role in providing broad oversight of PCC's employment policies. Accordingly, the matters discussed in the second, third, and fourth subparts of the cited bullet point are irrelevant to the scope of the Focused Visit, and their inclusion in the draft report is an error of fact.

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests the deletion of all text from the cited bullet point after the first sentence, beginning with, "The following comments" through and including the concluding sentence, "The College is strongly advised to review these allegations by its own employees and take appropriate action to remedy such situations."

39. On Page 17, First Bullet Point, Multiple Statements Regarding Employment "Culture" at PCC

Error: The draft report errs in including as fact and deferring to the unsubstantiated negative opinions and allegations of a very small number employees while omitting statistical data showing a far more positive and significantly improved climate and culture at PCC.

Factual Basis: The draft report includes multiple unsubstantiated and highly negative opinions, feelings, and allegations of a few individual employees about their personal perceptions of the employment culture and climate at PCC, but it does not include, address, or acknowledge the existence of statistical information that demonstrates that the employment culture and climate at PCC is far more positive and showing significant recent improvement.

Specifically, the results of the 2022 College Employee Satisfaction Survey indicate that over 50% of employee statements in the "campus culture and policies" section have seen a statistically significant increase in employee satisfaction. Additionally, more than 60% of employees responded that they were "very satisfied," "satisfied," or "somewhat satisfied" that PCC "does a good job of meeting the needs of its [faculty, staff, and administrators],"that "[t]here is a spirit of teamwork and cooperation at [PCC,]" that PCC "involves its employees in planning for the future[,]" and that "[e]fforts to improve the complaints and grievance procedures are paying off at [PCC.]"

Similarly notable results were also seen in a recent survey conducted by the Pima Community College Education Association (PCCEA). As noted above, PCCEA is an employee representative organization of PCC faculty that is not officially part of the college, and its survey was not conducted by PCC, nor were its methodology or results verified by the college. Nonetheless, the reported results indicate consistently high levels of respect for and confidence in PCC's executive administrators, with nearly 60% of faculty responding that the Chancellor's leadership "meets," "exceeds," or "consistently exceeds" their expectations, and over 70% of faculty expressed the same sentiments about the Provost. Likewise, at least 50% and, in some instances, over 80% of survey respondents stated that the Chancellor and/or the Provost met, exceeded, or consistently exceeded their expectations in areas crucial to climate and culture, including "Reliability," "Communication," "Integrity," and "Conflict Resolution."

Reliance upon an extremely small number of examples of employees having subjectively negative feelings, opinions, complaints, or allegations about PCC, while excluding empirical survey data showing that the overall climate and culture at PCC is much more positive and, indeed, improving, is a methodological and factual error. As such, the draft report should not have included the anecdotal information contained in the cited bullet points' four subparts.

Evidentiary Citation: Please see Exhibit 5, PCC's College Employee Satisfaction Survey – 2022 ("Main Results"); see also the Executive Leadership Team page on PCC's website; see also Exhibit 12, PCCEA's "Faculty Evaluation of Administration – Spring 2021".

Suggested Correction: PCC respectfully suggests the deletion of all text from the cited bullet point after the first sentence, beginning with, "The following comments" through

and including the concluding sentence, “The College is strongly advised to review these allegations by its own employees and take appropriate action to remedy such situations.”

In the alternative, PCC respectfully requests that factual information from the 2022 Employee Satisfaction Survey be included in the cited “Evidence” section, along with an acknowledgement that the subjective opinions, feelings, allegations, and complaints expressed by the small number of individual employees with whom the reviewers spoke during the Focused Visit is not reflective of the overall culture and climate of PCC as demonstrated by the empirical results of the 2022 survey.

40. On Page 17, First Bullet Point, Second Subpart, Regarding an Impromptu Closed-Door Interview with an Individual Employee and “Asking Other Attendees to Depart the Session”

Error: The draft report errs in including discussion of a highly unusual, impromptu, closed-door interview with an individual employee, for which the reviewers “ask[ed] other attendees to depart the session” and during which the employee made unsubstantiated, ambiguous claims about “a culture of fear and intimidation” at PCC.

Factual Basis: The employee’s inflammatory statements to the review team, as indicated in the cited portion of the draft report, are vague and unsupported by any factual evidence or even anecdotal examples. Additionally, the employee in question previously notified PCC’s internal auditor of the same underlying allegations related to PCC’s energy-management project, essentially just forwarding to PCC’s auditor C-FAIRR’s meritless complaint about the same matter (see attached emails, cited below). As noted above, C-FAIRR’s complaint has been investigated independently a number of times and consistently determined to be unfounded or to warrant no further action. Nonetheless, PCC’s Internal Auditor attempted to respond to the employee’s concerns and has continued to address the underlying issue, including by retaining an external auditing firm (see exhibits cited below). However, the employee has declined to cooperate further. As such, the unexamined inclusion of the employee’s bare allegations in the draft report, without any evidentiary basis, as somehow indicative of the overall climate at PCC is an error of fact.

Moreover, as discussed above, the scope of the HLC’s Focused Visit, as it pertains to employment matters, does not include acting as *ad hoc* human resources specialists, investigating specific complaints made by or about individual PCC employees. Rather, the review team is tasked with examining the Board’s role in providing broad oversight of PCC’s employment policies. Accordingly, one individual employee’s ambiguous and unsupported allegations discussed in the second subpart of the cited bullet point – provided to the reviewers in an unscheduled closed-door interview for which other PCC staff members were asked to leave the room – are irrelevant to the scope of the Focused Visit, and their inclusion in the draft report is an error of fact.

Evidentiary Citation: Please see Exhibit 14, Emails between PCC's Internal Auditor and Joyce Jaden; see also Exhibit 15, Clifton Larson Allen's (CLA) Internal Control Review Report – Procurement & Contracts (June 2021).

Suggested Correction: PCC respectfully suggests that the second subpart of the third bullet point under the cited "Evidence" section be deleted in its entirety, beginning with, "During the scheduled meeting with an assembled group of College administrators. . . ."

41. On Page 17, First Bullet Point, Third Subpart, Regarding Former Employee's Salary Complaint

Error: The draft report omits the material fact that this former employee's salary complaint was investigated by outside counsel and determined to be unsubstantiated. Inclusion of this unsupported allegation in the draft report as evidence of purported systemic issues at PCC – issues that could affect the college's accreditation and warrant intervention by the HLC – is an error of fact.

Factual Basis: After receiving this former employee's complaint, the college retained outside counsel, attorney Tim Medcoff, to conduct an independent investigation. Mr. Medcoff determined that there was no evidence to substantiate the former employee's allegations and communicated that determination to the employee in December of 2021, but the employee did not accept it and continued to press the issue with PCC's Board Chair, Catherine Ripley, and with the HLC (please see emails cited below). Notably, as evidenced by the cited email exchanges, Board Chair Ripley did, in fact, respond to Mr. Murthy, despite his allegations to the contrary – a fact that was available to the review team.

Given the results of the independent investigation into this complaint, and the information previously submitted to HLC, there is no factual basis upon which to conclude that the employee's unsubstantiated individual allegations or personal salary grievances have any bearing on PCC-wide employment policies, the Governing Board's role in overseeing them, or any issues which might affect PCC's accreditation.

Evidentiary Citation: Please see Exhibit 16, 2021 emails between Tim Medcoff and Raj Murthy; please also see Exhibit 17, 2022 email messages from Mr. Murthy to Board Chair Ripley and to the HLC.

Suggested Correction: PCC respectfully suggests that the cited subpart be deleted from the draft report in its entirety. In the alternative, PCC respectfully suggests that cited subpart be revised to state that PCC retained independent outside counsel to investigate the former employee's complaint, which was ultimately determined to be unsubstantiated.

42. On Page 17, First Bullet Point, Fourth Subpart, Regarding "Multiple Senior Officers" Allegations Against "Another Senior PCC Officer"

Error: The draft report errs in mischaracterizing the number of individuals making the allegations as "multiple senior officials[.]" At most, the number is three. Likewise, the draft report's unambiguous reference to "the arrival of another senior PCC official" is unfairly prejudicial to the PCC official in question about whom these unsubstantiated and unexamined allegations were made.

Factual Basis: The phrase "multiple senior officials" improperly suggests that a far greater number of individuals made the allegations in question than actually did. PCC calculates that, at most, three individuals voiced these allegations to the review team, which appears to have accepted them wholesale, without any evidentiary support or inquiry.

Moreover, these unsupported and highly prejudicial allegations refer to "another senior PCC official" whose identity could be easily inferred from the context by anyone with a cursory knowledge of PCC's administrative structure. To include such damaging unverified allegations against a readily identifiable individual employee as "evidence," with no factual basis or any inquiry into their veracity, is fundamentally flawed methodology, unfair and prejudicial to the employee in question, and an error of fact.

Evidentiary Citation: N/A

Suggested Correction: PCC respectfully suggests the deletion of the cited fourth subpart in its entirety. Alternatively, PCC respectfully suggests 1) that the term "multiple" be replaced with the actual number of individuals who made the specified allegations, and 2) deletion of the phrase "since the arrival of another senior PCC officer[.]"

43. On Page 17, First Bullet Point, Fourth Subpart, Regarding the "Sudden Resignation of Top-Level Administrators of Color"

Error: The draft report errs in correlating the departure of certain PCC administrators with unsubstantiated allegations about the culture and climate for employees at PCC when the administrators in question left PCC to pursue high-level positions elsewhere.

Factual Basis: Although it is unclear from the draft report which "top-level administrators of color" are being referred to, the only PCC administrators meeting that description who have left the college recently, Dr. Bruce Moses and Dr. Lamata Mitchell, have done so to accept high-level positions elsewhere. In December 2021, Dr. Moses, PCC's Vice Chancellor for Educational Services and Institutional Integrity, announced that he would be leaving PCC to become the President of Allen Community College in Kansas. In February 2022, Dr. Lamata Mitchell, PCC's Vice Provost for Academic Affairs and

Student Learning, left PCC to accept the position of Vice President and Chief Learning Officer with AdventHealth.

Additionally, Isaac Abbs (a person of color) recently returned to PCC to serve as Assistant Vice Chancellor for Information Technology and Chief Information Officer, a top-level administrative position and member of PCC's Executive Leadership Team. Mr. Abbs had previously served as PCC's Director of Enterprise Systems from 2010 to 2019 before leaving the college to accept a position as Technology Services Director for the Town of Marana, Arizona.

Notably, PCC's Executive Leadership Team (ELT) consists of the Chancellor, who is himself a person of color, and thirteen PCC administrators. Of those thirteen, five are persons of color who were hired or promoted into their executive-level positions at PCC by the Chancellor personally or with his ultimate approval.

The factual evidence is certainly not indicative of "a culture of fear, shame, and bullying" that does not "support[] or respect[]" administrators of color or other employees. On the contrary, the fact that PCC administrators of color have been promoted internally, gone on to have high-level leadership roles at other institutions, or have subsequently returned to higher positions at PCC after pursuing their careers elsewhere, supports a conclusion that PCC values, encourages, and develops their considerable talents.

Evidentiary Citation: Please see Exhibit 18, Personnel Announcements – Bruce Moses (12-23-2021), Lamata Mitchell (2-21-2022), Isaac Abbs (5-27-2022); see also the Executive Leadership Team's page on PCC's website.

Suggested Correction: PCC respectfully suggests the deletion of the following sentence: "Also mentioned as contributing to PCC's toxic environment are the sudden resignation of top-level administrators of color, the resignation of a transgendered employee who left the College because they did not feel supported or respected, and a mostly white, male dominated leadership group around the Chancellor that fosters a so-called 'Bro Culture.'"

44. On Page 19, "Focus Area A1", Fifth Sentence, Regarding Allegations of "the Role of Board Chair Being Passed Around to Keep Other Board Members in a 'Lesser' Status"

Error: The draft report erred in including as an implicit fact the unsupported allegation by "some Board members" that the role of the Board Charis is being "passed around" to "keep [them] in a 'lesser' status." The draft report further erred in characterizing these Board members' unsupported conspiratorial "frustrations" as being "[o]f particular note[.]"

Additionally, in line 4 of this section, "dysfunction" is misspelled (as "disfunction").

Factual Basis: There is no evidentiary basis upon which to make the unsupported inference that these Board members are positing, and the draft report errs in citing it as being "[o]f particular note". While the Board members in question may genuinely believe their own unsubstantiated allegations, there is no factual basis for them, and the draft report errs in considering and amplifying these unsupported conspiratorial "frustrations" when assessing the "effectiveness of relationships among and between" Board members.

Contrary to these Board members' speculation, on March 10, 2022, former Board Chair and current Vice Chair, Demion Clinco, expressed publicly and specifically the reasons why he has not supported one of the Board members in question, Maria Garcia, for a leadership role on the Board: 1) Mr. Clinco stated that he believes she has engaged in "disqualifying activities that violated [the Board's] bylaws"; 2) "although [all Board members] agreed to reciprocal communication[,]" Ms. Garcia had "made no effort to reach out to the Chancellor, and 3) that "by violating the laws of the institution, Ms. Garcia is undermining the intent of having a collaborative and functioning democratic Board."

Evidentiary Citation: Please see Exhibit 10, the March 14, 2022 Lewis Roca Memorandum, p. 7, par. 1.

Suggested Correction: PCC respectfully suggests deletion of the following sentence from the cited section of the draft report: "Of particular note is the expressed frustration by some Board members that the role of Board Chair is being passed around to certain members to keep other Board members in a 'lesser' status." PCC also respectfully suggests correction of the misspelled word in line 4.

45. On Page 19, "Focus Area A3", Third Sentence, Regarding Constituents' Dissatisfaction with the Ethnic/Racial Composition of the Senior Leadership

Error: The draft report errs in including in its summation of Focus Area A3 the "dissatisfaction" of certain unspecified "constituents" with the "ethnic/racial composition" of PCC's senior leadership.

Factual Basis: The parochial desire of certain individuals for PCC to have more (or fewer) senior administrators of a particular race or ethnicity is, to say the least, irrelevant to PCC's accreditation or to the issue of the Board's role in overseeing PCC's employment processes. Employment practices that discriminate on the basis of race or ethnicity are illegal, regardless of the "expressed dissatisfaction" of "a number of constituents" or the "composition" of the student body or the community (see, *e.g.*, Arizona Revised Statute (A.R.S.) 41-1463(B)(2) (stating, "It is an unlawful employment practice for an employer . . . [t]o limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an

employee, because of the individual's race, color, . . . or national origin")). Although PCC endeavors continuously to be more diverse and welcoming to everyone, it is certainly not a valid basis for HLC monitoring that certain people think PCC's employment practices are not discriminatory enough.

Nonetheless, the fact remains that PCC's senior leadership is already demonstrably diverse. As noted above, of the fourteen members of PCC's Executive Leadership Team (ELT), six, including the Chancellor and the Provost, are persons of color, with other ELT members representing the LGBTQ+, disabled-persons, and military-veteran communities. Notably, PCC's five-member Governing Board is equally if not even more diverse than ELT, with members representing the Asian, Hispanic, Native American, military-veteran, and LGBTQ+ communities. Likewise, a 2022 empirical survey found that more than 75% of PCC employees responded that they were "very satisfied," "satisfied," or "somewhat satisfied" that PCC "fosters an environment that is inclusive of diverse identities."

Evidentiary Citation: Please see A.R.S. 41-1463, *et seq.*; see also the Executive Leadership Team and Governing Board pages on PCC's website; see also PCC's College Employee Satisfaction Survey – 2022 ("Main Results") .

Suggested Correction: PCC respectfully suggests the deletion of the following sentence: "Generally speaking, a number of constituents expressed dissatisfaction that the ethnic/racial composition of the senior leadership does not reflect the student body and Pima County community."

46. On Page 19, "Focus Area A3", Line 3, Misnomer - "Office of Conflict Resolution"

Error: The "Office of Dispute Resolution" (ODR) is misidentified as the "Office of Conflict Resolution"

Factual Basis: N/A (misnomer)

Evidentiary Citation: Please see ODR's page on PCC's website.

Suggested Correction: PCC respectfully suggests revising "Office of Conflict Resolution" to read "Office of Dispute Resolution."

47. On Page 20, "Monitoring," Recommendation I.1 – "Revision of BOG Bylaws" to Ensure "Equal Access to the Board Chair's Role"

Error: The draft report errs in omitting pertinent facts demonstrating that PCC's bylaws are already compliant with applicable state law, as confirmed by the Arizona Attorney General, which complies with HLC's Assumed Practices.

Factual Basis: As noted above, the fact that two Board members "covet[]" the "role of Board Chair[,]" but their peers have voted to elect other members to serve in that role in accordance with the Board's bylaws (see Draft Report. p. 10), is irrelevant to the purpose of HLC's visit and not a valid factual basis upon which to recommend that PCC be placed on "Monitoring".

Put simply, the Board's bylaws already "ensur[e] equal access" to the role of Board Chair, but "equal access" does not mean, nor does it require, that "everyone gets a turn." Per the existing bylaws, every Board member has an equal opportunity and equal ability to self-nominate or to nominate any other Board member to serve as Board Chair. Each Board Member has an equal vote on that nomination, and the nominee who receives the most votes is elected Board Chair for the term set forth in the bylaws. Notably, the most votes have gone to nominees who have *not* been found by the Arizona Attorney General to have violated the state's Open Meetings Law and disclosed confidential PCC information to outside parties who routinely file specious, unfounded complaints against PCC (*e.g.*, C-FAIRR).

The only pertinent question, for HLC's purposes, is whether the Board's bylaws noted above are "in compliance at all times with all applicable laws[.]" (See HLC's Assumed Practices, Section A ("Integrity: Ethical and Responsible Conduct"), subsection 10). As discussed previously, the Arizona Attorney General has already answered that question in a June 3, 2021 Opinion noting that the Board's "elections for officers . . . are permissible under [state law]." PCC respectfully submits that the state Attorney General, rather than individual Board members, the reviewers, or HLC is the appropriate authority to decide which Board practices do or do not comply with applicable state law. As such, it is a factual error to omit the Arizona Attorney General's opinion on this issue and to conclude based on unsupported allegations and the parochial desires of two Board members that the Chair-selection process is a "concern[]" that warrants "[m]onitoring" and/or needs to be "remedied[.]"

Evidentiary Citation: Please see Arizona Revised Statute (A.R.S.) 15-1443; Exhibit 8, June 3, 2021 Arizona Attorney General Opinion No. I21-005; see also Exhibit 1, the Arizona Attorney General's April 14, 2022 Notice Letter Finding Violations of the Open Meeting Law by Board Members Maria Garcia and Luis Gonzales.

Suggested Correction: PCC respectfully suggests the deletion of recommendation I.1 on page 20 of the draft report.

48. On Page 20, "Monitoring", Recommendation I.2 – "Clarification and Agreement on the Delegation of Authority for the Chancellor" and the Omission of AGB's Findings

Error: The draft report errs in not including or acknowledging as factual evidence the February 25, 2022 report to PCC's Governing Board by AGB Consulting, "An

Independent Assessment of the Governance Effectiveness of the Pima Community College Governing Board" (AGB Report) which addressed specifically the delegation of authority to the Chancellor and found that it was "appropriate, effective, and supported[.]"

Factual Basis: In a conversation with PCC's Chancellor and General Counsel, HLC President Barbara Gellman-Danley recommended that PCC consider hiring The Association of Governing Boards (AGB) consulting team to review governance issues in advance of the HLC's March 2022 visit. On January 12, 2022, PCC's Governing Board voted 3 to 2 to retain AGB, with Board Members Maria Garcia and Luis Gonzales voting no. From February 13, 2022 to February 18, 2022, AGB conduct an on-site investigation at PCC, and, on February 25, 2022, submitted the AGB Report cited below.

In its Report, among other thoroughly researched and fact-based assessments and recommendations, AGB found "that the operational delegation of authority to the Chancellor by the Board is appropriate, effective, and supported by the new protocols an practices put in place since the Chancellor's arrival[.]"

Here, the draft report does not address or acknowledge the AGB Report's finding on this point. In fact, the draft report does not address the issue of the Chancellor's delegated authority at all, other than to note that establishing that delegated authority is one of the Governing Board's primary duties (see Draft Report, p. 10, "Evidence", bullet point 1) and to recite it as one of the "recommendations" "offered" to PCC by C-FAIRR in its August 4, 2021 complaint to HLC (*i.e.,* that "[t]he Board should engage in a major and thorough review of all policies pertaining to delegation of authority to [the] Chancellor").

Given that AGB has already thoroughly investigated and addressed this issue, and that the draft report has addressed no evidence to suggest further inquiry or clarification is necessary or warranted, it is an error of fact to include "[c]larification and agreement on the delegation of authority for the Chancellor" as a recommendation for "Monitoring."

Evidentiary Citation: Please see Exhibit 19, the Governing Board's January 12, 2022 "Agenda Item Details"; see also Exhibit 20, AGB's "An Independent Assessment of the Governance Effectiveness of the Pima Community College Governing Board" (February 25, 2022).

Suggested Correction: PCC respectfully suggests that "Monitoring" recommendation I.2 on page 20 of the draft report be deleted.

49. On Page 20, "Monitoring," Recommendation II.1, Regarding "Processes are in Place to Ensure Fair and Equitable Treatment"

Error: The draft report's recommendation that "[m]onitoring" is needed to verify that "[p]rocesses are in place to ensure fair and equitable treatment of women and people of color" is based entirely on unverified and unexamined anecdotal allegations from a very

small number of individuals, unsupported by evidence, and contradicted by the overall positive climate of diversity, equity, and inclusion at PCC. As such, its inclusion in the draft report is in error.

Factual Basis: The inclusion of this item as a "concern[]" that needs to be "remedied" and, as such, warrants "Monitoring" by HLC is highly prejudicial to PCC. More importantly, it is unsupported by relevant facts and belied by the actual evidence.

As cited below, PCC already has "[p]rocesses . . . in place" to "ensure fair and equitable treatment" of all members of the college community, including "women and people of color[.]" The fact that a very small number of individuals voiced complaints or made unsupported allegations to the review team during the Focused Visit does not mean that PCC's policies and processes are not "in place" or that they are ineffective. For the draft report to suggest otherwise, based on a handful of conversations, is extremely prejudicial and unfair to PCC. More importantly, such a recommendation is belied by the statistical evidence – cited frequently in this document – showing a far more positive culture and climate at PCC.

It bears mention that the HLC's Assumed Practices require that an "institution establishes and publicizes clear procedures for receiving complaints . . . responding to complaints in a timely manner, and analyzing complaints to improve its processes" and that "[t]he institution does not retaliate against those who raise complaints. (See HLC's Assumed Practices, Section A ("Integrity: Ethical and Responsible Conduct"), subpart 4). As evidenced by the citations below, PCC is demonstrably compliant with these practices. It is not the appropriate role of the reviewers to dismiss the existence of PCC policies or to conclude they are ineffective based on unsupported assumptions about the merit of a few unsubstantiated complaints, unexamined allegations, and personal anecdotes. Accordingly, the inclusion of recommendation II.1 was in error.

Evidentiary Citation: Please see Board Policy (BP) 5.10; Administrative Procedure (AP) 2.03.01; PCC Employee Handbook (Code of Conduct; Complaints; Discrimination, Harassment, and Retaliation; Equal Employment Opportunity; Grievance Policy; Whistleblower Procedures and Retaliation Prevention); see also Exhibit 5, College Employee Satisfaction Survey Results and Interpretive Guide – 2022.

Suggested Correction: PCC respectfully suggests deletion of recommendation II.1 on page 20 of the draft report.

50. On Page 20, "Monitoring," Recommendation II.4, Regarding "Plan to Achieve Racial/Ethnic and Gender Diversity . . . Reflecting the Student Body Profile and Pima County Community"

Error: The draft report errs in including "a plan to achieve racial/ethnic and gender diversity" in various employment categories as a basis for HLC monitoring.

Factual Basis: PCC is already a racially and ethnically diverse institution with a strong commitment to gender equity and Diversity, Equity, and Inclusion. Although PCC endeavors continuously to be a more diverse and welcoming institution, including in its hiring, employment practices that discriminate on the basis of race or ethnicity (*e.g.*, quotas) are illegal (see, *e.g.*, Arizona Revised Statute (A.R.S.) 41-1463(B)(2) (stating, "It is an unlawful employment practice for an employer . . . [t]o limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, . . . sex, . . . or national origin")). HLC requires that PCC "remain[] in compliance at all times with all applicable laws[.]" (See HLC's Assumed Practices, Section A ("Integrity: Ethical and Responsible Conduct"), subsection 10). As such, to require PCC to implement employment practices that contravene state law would not be consistent with HLC's assumed practices. Accordingly, the draft report errs in including recommendation II.4 as a criteria for monitoring.

Evidentiary Citation: Please see A.R.S. 41-1463, *et seq.*; see also the Executive Leadership Team's page on PCC's website.

Suggested Correction: PCC respectfully suggests the deletion of "concern" II.4 under "Monitoring."