

GEORGIA A. STATON
PHONE: (602) 263-1752
FAX: (602) 200-7854
GSTATON@JSHFIRM.COM



40 N. CENTRAL AVENUE
SUITE 2700
PHOENIX, ARIZONA 85004
PHONE: (602) 263-1700
FAX: (602) 651-7599

RAVI V. PATEL
PHONE: (602) 263-1738
FAX: (602) 200-7859
RPATEL@JSHFIRM.COM

August 17, 2022

Marla Morgen (mmorgen@hlcommission.org)
General Counsel
Higher Learning Commission
230 South LaSalle Street, Suite 7-500 Chicago,
Illinois 60604-1411

Re: Pima County Community College District

Dear Ms. Morgen:

On behalf of Pima County Community College District (“PCC” or “Pima Community College”), we are sharing a number of concerns about the pending Focused Visit review process and request additional steps within the applicable Higher Learning Commission framework to address these concerns. As more fully explained below, the June 23, 2022 Focused Visit Report authored by Dr. Benjamin F. Young (Team Chair) and Dr. Ronald S. Ramming (“the Report”) (1) contains significant factual errors; and (2) includes recommendations made outside the scope of the accreditation process. As a result, we ask that HLC take one of the following steps to address these errors:

- Reject the Report and conduct a new Focused Visit;
- Or, set this matter for an Institutional Actions Council Hearing.

As a member institution accredited by the Higher Learning Commission (“HLC”), PCC is entitled to a fair and impartial consideration of complaints made against it. HLC’s policies are to be applied in a manner that ensures due process (See, e.g., Policy PPAR.A.10.000; 34 C.F.R. §602.25). HLC policies commit the Commission to review complaints in a timely, fair and equitable manner. Policy COMM.A.10.030. The HLC’s complaint process is not intended to address “personal issue[s]” or to obtain an individual remedy; it is to determine a member institution’s ability to meet the Criteria for Accreditation. Policy COMM.A.10.030. HLC requires that the Criteria for Accreditation be supported by documentary evidence, to substantiate the facts or arguments presented. (See e.g. *Providing Evidence for the Criteria for Accreditation*.) The principles of equity and due process require that the conclusions in the Report be similarly supported by documentary evidence.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 2

THE COLLEGE HAS BEEN PROHIBITED FROM FULLY RESPONDING TO THE REPORT AND THEREFORE DENIED DUE PROCESS

Unfortunately, the Final Report was not based on reliable or accurate information, and PCC's attempts to provide documentary and factual evidence have been unreasonably restricted and largely ignored. The present circumstances are inconsistent with HLC Policy which states that "institutions are offered an opportunity to respond... at each stage of the decision-making process." (See, *Decision-Making Bodies and Processes*, <https://www.hlcommission.org/Accreditation/decision-making.html>; see also, e.g. Policies INST.F.10.010, and COMM.A.10.030). Federal regulations require the same. 34 C.F.R. §602.17; §602.23(c)(1). An accreditor is required to ensure that it has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate. 24 C.F.R. §602.18(b)(4). However, the Reviewing Team failed to meet these standards as has the process allowed for PCC to address the errors in the Final Report.

Because the draft report was riddled with factual errors, PCC submitted a 38-page memorandum on June 20, 2022 to the Reviewing Team detailing each error with supporting documentation. Within three days, the Team finalized its report correcting only typographical/grammatical errors. Suffice it to say, the quick turnaround of the final Report demonstrates that little, if any, time was devoted to considering the College's input, or ensuring that the information contained therein was accurate. And as noted by PCC, the Report still contained numerous, obvious mistakes of fact such as the number of employees in Human Resources and the type of meeting the Reviewers had with the Board.

On June 21, 2022, PCC received an email from its HLC liaison Dr. Linnea Stenson stating that "neither [38-page] narrative nor the supporting evidence [PCC] provided . . . [would] be included in the record at this point[.]" and "[i]f [PCC] want[ed] any of this information included, [it] would need to submit it as part of [PCC's] institutional response" to the IAC. Later, PCC was notified that its Response to the Report was to be submitted on the Institutional Response Form which could be accompanied by a letter "not to exceed five pages," which was clearly inadequate based on the numerous errors documented by PCC. Nevertheless, in light of the HLC instruction, PCC submitted a five-page response on July 8, 2022 which outlined areas of agreement and disagreement and provided support for its positions by embedding links to relevant information, so the IAC had the ability to review the supporting materials.

On July 15, 2022, PCC was notified the HLC could not open the links and was advised that links to a response were prohibited.¹ However, PCC was later told that it could attach 50 pages to its response. While the College appreciates being able to provide a more fulsome response, that

¹ PCC was unable to locate a policy statement that prohibited embedding links in its response. Nor does HLC's policies regarding complaints contain limits on the length or content of an institution's response.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 3

is not sufficient particularly in light of the Reviewers' acceptance, as fact, many unsupported assertions made by a community advocacy group and two Board Members whose primary goal is to politically dismantle the current Governing Board. The Reviewers' disregard of the requirement to rely on evidence and factual information undermines the HLC's standards and deprives PCC of its due process rights.

On July 25, 2022, at the direction of HLC's Vice President for Accreditation Relations Dr. Linnea Stenson, PCC resubmitted 50 pages of exhibits (excluding cover pages and an index to the citations). On August 1, 2022, Dr. Stenson sent a letter indicating that the pages provided exceeded the "standard response length" for an IAC submission. She stated that IAC members were not required to read more than this "standard length." Dr. Stenson's position is contrary to HLC policy which requires the IAC to review and analyze "the full record" which includes both all "materials submitted by the institution in preparation for review" and "any institutional responses from the institution." HLC is required to insure that "in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint" for the IAC to complete its review and make a decision on a complaint. 34 C.F.R. §602.23. HLC's **published** procedures place no limitation on either providing exhibits to errors of fact in a draft Focused Visit report, nor in advance of an IAC committee meeting. Moreover, it is clear that HLC's published policies **do** require the IAC to review all of the evidence so that they may arrive at a fair and reasoned decision.

Moreover, the page limits imposed by HLC to respond to these complaints are not reasonable and do not comport with due process. Not only did the initial complaints received by HLC include hundreds of pages of documents and allegations to be refuted, but as discussed below the Focused Visit Reviewers spent time and effort developing new complaints to which PCC was given no opportunity to respond before the Focused Visit report was finalized.

THE JUNE 23, 2022 REPORT SHOULD BE REJECTED AND A NEW TEAM APPOINTED

The Higher Learning Commission is required to have effective controls against the inconsistent application of agency standards. 34 C.F.R. §302.18(b)(2). The President of the Higher Learning Commission ("HLC") has the authority to "terminate, postpone or cancel a visit in extraordinary circumstances." See Policy COMM.B.10.220. Undoubtedly, this authority was granted to the President to ensure that HLC standards are upheld and applied fairly and consistently during the review process. Because the Focused Visit process is still ongoing, i.e., the Institutional Actions Council Committee has not yet convened to consider the Focused Visit Report, we believe it is within the President's authority to either terminate the process and direct that a new team of reviewers be appointed or set this matter for an Institutional Actions Council Hearing.

At the suggestion of President Barbara Gellman-Danley, the College engaged AGB Consulting (the consulting organization of the Association of Governing Boards of Universities

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 4

and Colleges) to perform an Independent Assessment of the Governance Effectiveness of the Pima Community College Governing Board. Dr. Peter Smith and Dr. James Lyons conducted a site visit from February 12, 2022 to February 18, 2022 – a full four days meeting with the Chancellor, Board Members and PCC administrators.²

AGB Consultants directed their efforts in determining whether HLC Core Criterion 2C was met. They concluded that the “institution is moving forward positively in all major respects, recovering from the causes for its probation 7 years ago.” While recognizing that there was dissention among the Board Members often resulting in a 3-2 split on certain matters, they noted that it was “remarkable that PCC is doing as well as it is given these circumstances.”³ Their overall finding was that the Board and Chancellor are succeeding in spite of the internal conflicts. Their conclusions stand in stark contrast to the conclusions/recommendations reached by the HLC Reviewing Team. We strongly believe that the HLC Reviewing Team, contrary to HLC requirements, failed to consider or request relevant evidence and lost all objectivity leading to erroneous and unsupported conclusions. A simple comparison of the two reports amply demonstrates which contains observations based on evidence and which simply parrots the accusations of a few, despite reams of contrary evidence. Even more troubling is the extent to which the Reviewers, without ever meeting with C-FAIR, simply adopted the position of a self-styled advocacy group with no apparent experience or qualifications for judging an institution of higher education.

² Although HLC policies allow a focused visit to be extended beyond the standard 1 ½ days, or extend to additional on-site visits, in this case, the HLC Focused Visit Reviewers spent at most 9 ½ hours in substantive meetings. More than two hours of that were spent on a specific employee’s concerns, rather than an accreditation-related topic. The Reviewers added no request for PCC to provide evidence to address issues that arose during the Focused Visit. As a result, the Reviewers conducted no meaningful review to support the allegations adopted in the Report.

³ Two Board Members, Maria Garcia and Luis Gonzales refused to speak with the AGB consultants. Indeed, Ms. Garcia questioned why the Board needed any assistance regarding accreditation requirements:

Okay, now, in my view, I personally do not need preparation for the HLC visit. I mean, what are they going to tell -- I just -- what are they going to tell us? I mean, what kind of training do we need?

* * *

Secondly, if other members need assistance to prepare for the HLC, they are welcome to do so. I need no preparation for the HLC visit.
(January 12, 2022 Board meeting.)

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 5

For this reason alone, the Reviewer's Focused Visit Report should be rejected and a new team appointed.

ALTERNATELY, A COMMITTEE HEARING SHOULD BE GRANTED

If the President declines to reject the present Focused Visit Report and direct that a new Focused Visit take place, then the College requests that an Institutional Actions Council Hearing be set. Policy INST.D.40.010 provides that the "HCL may, in its discretion, determine when to use the Institutional Actions Council Meeting Committee and Institutional Actions Council Hearing Committee as appropriate under the circumstances." The College requests that the HLC use its discretion and submit this matter to the Institutional Actions Council Hearing Committee in order to allow PCC representatives the opportunity to lay out the facts and evidence for the Committee's consideration.

One of the core tenants espoused by the HLC is that its decisions will be based on facts and that those involved in the review process will be impartial. See, for example, PERA.10.040. In an HLC resource entitled "Providing Evidence for the Criteria for Accreditation," the HLC outlines the type of evidence that the institution should assemble. It refers to documentation such as policies, agendas, minutes, etc. If that is the type of evidence that the HLC expects institutions to produce, it is only fitting that the Reviewers adhere to the same requirements and not accept as "fact" statements made by a few disgruntled employees or Board members. Unfortunately, in this instance, the Reviewers did not adhere to that requirement.

The Reviewers' report contains many factual errors as well as incendiary language based on comments made by a handful of people which is not reflective of the views of the PCC's 2000+ employees. For example, the Report states that staff and faculty described the College atmosphere as being one of "fear and retaliation." (Report at p. 4). That statement does not reflect the assessment of a vast majority of PCC's employees. Rather, it is based on a very few disaffected current and former employees.⁴ The College provided the Reviewers with the College's broad-based Spring 2022 Employee Satisfaction Survey Results. The results of this broad-based survey demonstrate that PCC faculty and staff uniformly highly rated the College's administration as meeting their needs and acting in a "spirit of teamwork and cooperation." This college-wide survey does not reflect an "atmosphere of fear and retaliation." Just the opposite. The survey was either ignored or discounted by the Reviewers. Either way, the Report erroneously ascribes the views of a few to the institution as a whole. This needs to be rectified and that can only be done through the hearing process with an opportunity for a thorough presentation of the evidence.

⁴ Indeed, the initial Complaint filed with the HLC was submitted by a terminated employee who is now in active litigation with the College with the underlying support of C-FAIRR and Board Members Garcia and Gonzales. In fact, his complaint consists of a document prepared largely by C-FAIRR.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 6

The Final Report also adopts the unsupported and incendiary language of a single disgruntled employee, about the culture at PCC. For example, at page 17, the report quoted a single employee who stated that there was a “culture of fear and intimidation... at PCC and his/her disagreement could lead to the loss of his/her job.” This statement has no factual basis. It is safe to say that on any college campus anywhere in the United States, the HLC could find at least one person that would make a similar comment. The “feelings” of a single employee is not a fact and is not indicative of the views of PCC’s employees as a whole as demonstrated by the Spring 2022 Survey referenced above. (See also the PCC submission to the IAC showing the College has consistently had a 90+% retention rate for employees.) Moreover, the issue of a single employee was an individual personnel matter inappropriate for consideration through the HLC complaint process. COMM.A.10.030. This is just one example of the Reviewer’s failure to ensure that its report was based on accurate and reliable information.

The Report also states that “multiple senior PCC Officers alleged that since the arrival of another senior PCC officer the College has embarked on a culture of ‘fear, shame and bullying.’” (See Report p. 17). PCC was not given notice and an opportunity to respond to this incendiary accusation. This Report simply parrots the feelings of two or three individuals who caught the Reviewers’ attention. Feelings and beliefs are not facts, and are not supported by any analysis of the College’s culture or practices. Issuing a report that the College has fostered a “culture of fear, shame and bullying” is a misrepresentation of the facts, which are that staff and faculty are highly satisfied with the direction PCC is taking. See 2022 Survey referenced above; *see also* faculty group (PCCEA) survey results.

In stating that PCC has a “toxic environment,” the report references the “sudden resignation” of two top level administrators of color. However, the Reviewers did not investigate the circumstances of the administrators’ departures. Even a cursory investigation would have revealed that there was nothing “sudden” about either administrator’s departure. They each left to pursue career advancement and moved on to other high-level administrative positions.⁵ The College also could have demonstrated that around the same time, women of color were promoted into upper-level administrator positions.⁶ This is not indicative of a “toxic environment,” nor is it indicative of a racist culture as the Reviewers imply. In fact, the Executive Leadership Team is

⁵ Dr. Bruce Moses left PCC to become the President of Allen Community College in Kansas. Dr. Moses had previously been a finalist in a prior search for a college presidency but withdrew after Chancellor Lambert offered him a promotion at PCC. Dr. Lamata Mitchell took a position as Vice President and Chief Learning Officer with AdventHealth to create a new employee training/education program.

⁶ Dr. Irene Robles-Lopez was promoted to Vice Chancellor for Student Experience and Dr. Suzanne Desjardin was promoted to Vice President of Student Affairs. Both identify as Hispanic women.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission

August 17, 2022

Page 7

diverse. Of the 14 members of the Executive Leadership Team, six, including the Chancellor and the Provost are persons of color. The Executive Leadership Team members also represent LGBTQ+, disabled, and veteran communities. The PCC five-member Governing Board is equally diverse. Its members represent the Asian, Hispanic, Native American, Military-Veteran, and LGBTQ+ communities.

Last, including a statement by a few disgruntled individuals that there is a “bro culture” at the College, has no legitimate place in the Report, particularly when there is no evidence to support such a characterization. For the HLC to adopt or tacitly accept such a comment made by less than a handful of individuals out of over 2000 employees and staff, without any corroborating evidence does a serious disservice to the College. It also ignores available evidence that the Chancellor, who is of African American heritage, has hired and promoted women and persons of color to high level positions at the College. The statement is not accurate, unsupported, and must be corrected.

PCC was not given the same opportunity to respond to these new complaints as it would if they had been submitted through the HLC’s formal complaint process. And, the endorsement of these uncorroborated and inaccurate comments by the Commission will create significant injury to the reputation of the PCC. Left unaddressed, statements in the Report impugn the integrity of the Chancellor and Executive Leadership Team members. At a minimum, due process mandates that PCC should be allowed an opportunity to present its position on these allegations in a hearing.

Moreover, it is important to note the highly contentious and often acrimonious political context in which the HLC’s Focused Visit is occurring. Members of the Governing Board are elected by Tucson citizens to a 6-year term. Although Board Members are not identified by party affiliation, they, nevertheless, hold political office. The HLC Reviewing Team’s Report undoubtedly will be used to sway voters during the upcoming November 2022 election. Although that may not have been the Reviewers’ intent, that will be the result. The HLC’s Guiding Values specifically provide:

The Governing Board must... hold itself independent of undue influence from individuals, be they donors, elected officials... or other with personal or political interests.

Those values certainly apply to the Reviewers as well. Yet, they uncritically accepted the comments, suggestions and recommendations of C-FAIRR, a political group which has demonstrated a long-standing animosity toward the College and its current Chancellor. In doing so, the Reviewers overstepped their role.⁷ In short, **the HLC is being manipulated and used by C-FAIRR and two disaffected board members (Maria Garcia and Luis Gonzales) to make a political change in the governance of the College.** That is not the purpose of a Focused Visit,

⁷ Why the Reviewers would accept recommendations of an outside political advocacy group they never met and know nothing of its antipathy to PCC is puzzling.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission

August 17, 2022

Page 8

nor is it the role of the Institutional Actions Council or the HLC to become entwined with local political issues. (*See* Standards of Conduct for peer reviewers, PEER.A.10.040.)

THE REVIEWERS STRAYED FROM THEIR STATED PURPOSE AND INSERTED THEMSELVES INTO OPERATIONAL AND EMPLOYMENT MATTERS

According to the September 2, 2021 Notice from the Higher Learning Commission, the scope of the Institutional Focused Visit, was to examine whether the Governing Board was in compliance with Core Criterion 2. In doing so, the Reviewers would focus on (1) whether Board Members were following their own policies and laws of the state; (2) the relationship between the Chancellor and Board Members; and (3) the relationship among Board Members. Instead of focusing on those matters, the reviewers moved well beyond their stated purpose and delved into both operational and personnel matters.

Becoming involved in employment disputes, individual personnel issues, or the College's operational decisions are not within the scope of an accreditation review. Furthermore, it is not within the purview of the Reviewers to insert themselves in the way the Governing Board chooses its officers. At pages 9-20 of the Report, the Reviewing Team recommended monitoring two specific areas: Board effectiveness and Board Oversight of Employment Processes and Institutional Climate. The rationale for the first recommendation is that two Board members complained that the role of Board Chair has been "passed round" among three Board Members and that they have not been elected to fulfill that role. The Review Team recommended that PCC take three steps and report its progress by July 1, 2023. The first step being a revision of the Board's bylaws to ensure that the role of Board Chair is "rotated." The recommendation fails to acknowledge that the system of electing a Board Chair follows Arizona state law. *See*, A.R.S. §15-1443 ("the district board shall organize by electing a president and a secretary from among its members") and Arizona Attorney General Opinion 121-005 (June 3, 2021) ("multi-year terms are permissible under A.R.S. §15-1443"). The only question for accreditation purposes is whether the Board's bylaws are "in compliance with all applicable laws." (See HLC's Assumed Practices Section A(10)). And, the short answer is they are. It was beyond the charge of the Reviewing Team to direct elected public officials how to select Board Officers, especially when the selection process complies with Arizona law.

The report also recommends that there be Board Oversight of Employee Processes and Institutional Climate thereafter listing four areas to be reviewed. Area One requests the College to report by July 1, 2023 how it will ensure fair and equitable treatment of women and people of color. Area four asks the College to report how it will achieve racial/ethnic and gender diversity for the executive leadership team, full-time faculty and technical/professional staff reflecting the

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 9

student body profile and Pima County Community.⁸ The Review Team failed to provide a rationale, i.e., a reason for such request and in doing so ignored the facts that were presented to them. Neither of these relate to Core Criterion 2.C.

Additionally, the Report cites no evidence that women and people of color are treated unfairly or inequitably. To be sure, Board Members Maria Garcia and Luis Gonzales have not been elected to Chair positions, but that is for a good reason. First, they refuse to meet with/interact with the Chancellor (see page 19 of PCC's Errors of Fact, citing Exhibit 10, *March 14, 2022 Lewis Roca Memorandum*, p. 4, par. 3).⁹ More recently, the Arizona Attorney General's Office concluded that **they both violated Arizona's Open Meeting Law and revealed confidential information discussed in Executive Sessions to a member of C-FAIRR**. This is not inequitable treatment on the basis of gender or ethnicity but rather reflects the Board's assessment of their qualifications to be effective leaders. Even so, they continue to serve roles in important Board committees, including the Finance and Audit Committee and the Human Resources Advisory Committee. The Final Review Report fails to even mention this evidence.

Further, when a College employee expressed concerns about her personal employment situation, the Reviewers conducted a private interview with her for approximately one hour and the next day interviewed her again as well as her supervisor. In keeping with HLC standards, the Reviewers should have referred the matter to the Chancellor for review and resolution in accordance with College personnel procedures, rather than undertaking their own investigation. *See* COMM.A.10.030 The Reviewers then compounded the error by discussing the situation in the Report, giving credence to an unsubstantiated allegation of misconduct and retaliation.

THE RECORD ON REVIEW

In addition, it remains unclear what record the IAC is being provided. HLC is required to ensure that it "[h]as a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate" 34 C.F.R. 602.18. To this end, it must allow "the institution or program the opportunity to respond in writing to the report of the on-site review" 34 C.F.R. 602(d). The HLC is also required to "ensure[] that the institution or program has **sufficient opportunity** to provide a response to the complaint;" 34 C.F.R. 602.23(c)(1), and review all complaints in a "timely, fair and equitable manner", applying "unbiased judgment" 34 C.F.R. 602.23(c)(3). The HLC must ensure that the procedures it uses throughout the accrediting process

⁸ As stated above, the Executive Leadership Team is diverse. And, as HLC is aware, the College already has a Diversity, Equity, and Inclusion Plan, which it continues to implement.

⁹ Maria Garcia also acknowledged in PCC's Governing Board's March 28, 2022 meeting that she and Mr. Gonzales, do have equal access to speak to the Chancellor. *See* Errors of Fact, Exhibit 9, *Minutes, PCC Governing Board Special Meeting, March 28, 2022*, p. 4, par 2.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 10

satisfy due process. This includes providing “**sufficient opportunity for a written response** by an institution or program regarding any deficiencies identified by the agency.” 34 C.F.R. 602.25.

Accordingly, HLC’s policies require that “[t]he Institutional Actions Council (IAC) **shall review and analyze the full record** prior to taking action or making a recommendation. The full record shall consist of materials submitted by the institution in preparation for review; team or panel reports; any institutional responses from the institution; and any applicable action letters and other official letters from HLC regarding the matter. In addition, HLC may add other documents to the record that it believes provide additional relevant information.” INST.D. 40.010.

In keeping with HLC’s obligation to allow institutions sufficient opportunity to respond to complaint allegations, the Policy does not allow the HLC to reject or limit the institutional responses from the institution.

Accordingly, the full record should include:

a. Materials submitted by the institution in preparation for the review.

Pima College provided the following materials to HLC prior to the focused visit review:

- PCC’s August 6, 2021 response to the pending complaints as Requested in HLC’s July 7, 2021 letter.
 - Exhibit 1 – Education Master Plan 2015-25, pgs. 10-12, 149, 157-159, 163-165, 172-174
 - Exhibit 2 – Chancellor Goals 2019-20
 - Exhibit 3 – Chancellor’s Evaluation Summary 2019-20
 - Exhibit 4 – Chancellor Goals 2020-21
 - Exhibit 5 – The Campus as a Living Laboratory
 - Exhibit 6 – July 14, 2021 Board meeting report on state cooperative purchasing agreement
 - Exhibit 7 – BP 1.05 — Delegation of Authority to the Chancellor
 - Exhibit 8 – AP 4.01.05 — Purchasing
 - Exhibit 9 – PCC Purchasing Manual
 - Exhibit 9 – PCC Purchasing Manual pg 8
 - Exhibit 10 – Ethical Standards and Conflict of Interest
 - Exhibit 11 – Conflict of Interest and Confidentiality Form

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 11

- Exhibit 12 – July and August 2019 email regarding “Draft Energy Program Concept.”
- Exhibit 13 – June 3, 2020 Trane Board Report
- Exhibit 14 – June 3, 2020 Meeting Minutes, pg. 7, Action Item 11.3 Contract with Trane, Inc.
- Exhibit 15 – April 19, 2021 Study Session Agenda
- Exhibit 16 – Energy & Sustainability proposal
- Exhibit 17 – Susan Segal opinion dated September 30, 2020
- Exhibit 18 – Oct. 6, 2020 meeting agenda item on Legal Counsel Opinions
- Exhibit 19 – Susan Segal report March 10, 2021
- Exhibit 19 – Segal Report March 10, 2021; Complaint Exhibits 54, 55, and 69
- Exhibit 19 – PCCCD Procurement Report, March 10, 2021
- Exhibit 19A – Resume for Susan Segal
- Exhibit 20 – Finance and Audit Committee meeting minutes from May 7 and May 27, 2021
- Exhibit 21 – June 9, 2021 Finance and Audit Committee report on energy project
- Exhibit 22 – Sen. Gonzales March 15, 2021 request letter
- Exhibit 23 – Attorney General March 30, 2021 decision
- Exhibit 24 – May 10, 2017 Board meeting agenda item on Conceptual Educational and Facilities Master Plans
- Exhibit 25 – May 9, 2018 Board meeting agenda item for approval of specific projects for the Educational and Facilities Master Plans
- Exhibit 26 – Chronology for West Campus projects
- Exhibit 27 – April 29, 2021 memo from Lambert to Ward
- Exhibit 28 – May 20, 2021 memo from Lambert to Ward
- Exhibit 29 – June 29, 2021 notice of cancellation
- Exhibit 30 – Dr. Bea July 2019 email to Procurement Director Terry Robinson with RFP examples
- Exhibit 31 – April 15, 2020 email from Luke Alm to David Davis

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 12

- Exhibit 32 – June 3, 2019 email between Luke Alm and David Davis about ESSA – Energy Storage Services Agreement
 - Exhibit 33 – Oct. 7 and 12, 2020 email between Luke Alm and David Davis on PCC Project Update
 - Exhibit 34 – June 3, 2020 transcript, pgs. 88-100
 - Exhibit 35 September 10, 2019 email from Dr. Bea.
 - Exhibit 36 Clifton report
- b. *HLC team or panel reports.*
- **The review team’s June 23, 2022 Focused Visit Report**
- c. *Any institutional responses from the institution.*
- **PCC’s June 20, 2022 Errors of Fact in the HLC’s Focused Visit Draft Report**
 - **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 Complaint1;**
 - **Exhibit 4 – Arizona Auditor General’s February 11, 2021 Email Declining Maria Garcia’s January 14, 2021 Request for an Audit;**
 - **Exhibit 5 – College Employee Satisfaction Survey Results and Interpretive Guide – 2022.**
 - **Exhibit 6 – the March 10, 2021 report by Susan Segal of Gust Rosenfeld**
 - **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**
 - **Exhibit 8 – June 3, 2021 Arizona Attorney General Opinion No. I21-005**

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 13

- **Exhibit 9 – Minutes, PCC Governing Board Special Meeting, March 28, 2022**
- **Exhibit 10 – March 14, 2022 Lewis Roca Memorandum**
- **Exhibit 11 – Susan Segal’s Memorandum re “Unmdl” (September 25, 2020)**
- **Exhibit 12 – PCCEA’s “Faculty Evaluation of Administration – Spring 2021**
- **Exhibit 13 – PCC’s attached Organization Chart - May 13, 2022**
- **Exhibit 14 – Emails between PCC’s Internal Auditor and Joyce Jaden**
- **Exhibit 15 – Clifton Larson Allen’s (CLA) Internal Control Review Report – Procurement & Contracts (June 2021)**
- **Exhibit 16 – 2021 emails between Tim Medcoff and Raj Murthy**
- **Exhibit 17 – 2022 email messages from Mr. Murthy to Board Chair Ripley and to the HLC**
- **Exhibit 18 – Personnel Announcements – Bruce Moses (12-23-2021), Lamata Mitchell (2-21-2022), Isaac Abbs (5-27-2022)**
- **Exhibit 19 – the Governing Board’s January 12, 2022 “Agenda Item Details”;**
- **Exhibit 20 – AGB’s “An Independent Assessment of the Governance Effectiveness of the Pima Community College Governing Board” (February 25, 2022)**
- **the Executive Leadership Team, Governing Board, and Office of Dispute Resolution pages on PCC’s website;**
- **Arizona Revised Statute (A.R.S.) §15-1443;**
- **A.R.S. §41-1463;**
- **A.R.S. §38-431;**
- **PCC’s Board Bylaws and Policies, including:**
 - **Board Policy (BP) 5.10;**
 - **PCC Governing Board Bylaws, Article XII;**
- **PCC Administrative Procedures, including**

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 14

- **Administrative Procedure (AP) 2.03.01;**
- **Administrative Procedure 6.01.01;**
- **PCC's Employee Handbook (Code of Conduct; Complaints; Discrimination, Harassment, and Retaliation; Equal Employment Opportunity; Grievance Policy; Whistleblower Procedures and Retaliation Prevention);**
- **PCC Governing Board's Human Resources Advisory Committee's Charter,**
- **PCC's July 8, 2022 Institutional Response to the HLC's Focused Visit report**
- **PCC's July 25, 2022 Letter from Chancellor Lee Lambert to the HLC Institutional Actions Council, resubmitting Exhibits A-V in support of its July 8, 2022 Institutional response**
 - **Exhibit A – Transcript of May 12, 2021 PCC Governing Board Meeting;**
 - **Exhibit B – PCC Governing Board Bylaws Article X – Code of Conduct;**
 - **Exhibit C – PCC Governing board Bylaws Article XII – Response to Complaints;**
 - **Exhibit D – Videos, Transcripts, and documents related to statements made by Board Members Garcia and Gonzales related to the issues raised in their HLC complaints;**
 - **Exhibit E – Minutes of Tuesday, October 6, 2020 PCC Governing Board Special Meeting;**
 - **Exhibit F – HLC Mid-Cycle Review Report for PCC (Jan. 29, 2019) (excerpt) finding PCC's in compliance with Core Component 2.C.**
 - **Exhibit G – Minutes of Monday, March 28, 2022 PCC Governing Board Special Meeting;**
 - **Exhibit H – A.R.S. §15-1443**
 - **Exhibit I – PCC Governing Board Bylaws Article IV – Officers**
 - **Exhibit J – Agenda, Motion and Minutes PCC Governing Board Annual and Regular Meetings relating to the Election of Governing Board's Officers (Minutes of January 15, 2021,**

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 15

January 15, 2021, January 8, 2020, January 9, 2019, January 10, 2018, and January 11, 2017)

- Exhibit K – PCC 2022 Statistics of Employees by Race, Ethnicity, and Gender
 - Exhibit L – PowerPoint slides, “Diversity, Equity, & Inclusion: DEI Strategic Planning Update and Overview of Climate Assessment,” PCC Governing Board Study Session (Feb. 21, 2022)
 - Exhibit M – PCC DEI Climate Survey 2021 (Executive Summary)
 - Exhibit N – HLC Mid-Cycle Review Report for PCC (Jan. 29, 2019) (excerpt), finding compliance with Core Component 1.C
 - Exhibit O – Excel Spreadsheet, “DEI Presentations to the Governing Board,”
 - Exhibit P – PCC data, “Retention – All Employees” (slides) (excerpt)
 - Exhibit Q – PCC’s “Diversity, Equity, & Inclusion Strategic Plan Update” (Oct. 26, 2020) (excerpt)
 - Exhibit R – PCCEA Faculty Evaluation of Administration (Chancellor and Provost) – Spring 2021
 - Exhibit S – HLC’s “Report of Comprehensive Evaluation to Pima County Community College District” (Sept. 2015) (excerpt)
 - Exhibit T – HLC Notification of Action Letter to PCC (March 9, 2015) (excerpt)
 - Exhibit U – Arizona Revised Statute (ARS) 41-1463, “Discrimination; unlawful practices; definition” (excerpt)
 - Exhibit V – U.S. Census Bureau, Quick Facts, Tucson, Arizona (July 1, 2021) (excerpt)
- This letter.
- d. *Any applicable action letters and other official letters from HLC regarding the matter.*
- July 7, 2021 Letter from Robert Rucker to Chancellor Lee Lambert.

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 16

- September 2, 2021 Letter from Robert Rucker to Chancellor Lee Lambert regarding Focused Visit recommendation.
- **June 21, 2022 email from Dr. Linnea Stenson to Chancellor Lee Lambert and Jeff Silvyn (with copies to Bruce Moses and Marla Morgan), declining to include the “20 exhibits plus the narrative provided as a response to the Focused Visit Report” in the record, and indicating that the information should be included in the institutional response.**
- **July 15, 2022, email from Dr. Linnea Stenson regarding submission of exhibits in support of institutional response.**
- **August 1, 2022 email from Dr. Linnea Stenson to Chancellor Lee Lambert, regarding PCC’s July 25, 2022 resubmission of exhibits.**
- **August 15, 2022 correspondence from Chancellor Lee Lambert to Dr. Linnea Stenson, regarding PCC’s institutional response for the IAC.**

In addition, HLC may add other documents to the record that it believes provide additional relevant information. It is unclear what if any other documents HLC intends to add to the record.

However, based on HLC’s correspondence, it is unclear what items are being included in the record to the IAC. (INST.D.40.010). In particular, PCC has concerns that the HLC intends to withhold the items in boldface above, from the IAC, in violation of due process, HLC’s written policies, and the federal regulations governing accreditation policies. Such an action would deprive PCC of the sufficient opportunity to respond to the numerous factual inaccuracies and misleading comments adopted by the Focused Visit Review Team in their report. This is particularly concerning because, if HLC proceeds to a closed hearing of the IAC, PCC will be unable to present its position to the committee directly.

If HLC intends to proceed to a closed hearing of the IAC, then PCC must have its position fully represented. Please confirm that all of items listed above will be provided to the IAC.

The numerous procedural and factual errors adopted in the Final Report have so tainted the complaint process as to have denied PCC due process. In order to remedy this, HLC should appoint a new Review Team to consider the complaints before it. At a minimum, due process requires that the HLC hold a hearing to allow PCC to respond to the complaints.

REQUEST FOR INFORMATION ON ARBITRATION PROCEDURES

We are confident that HLC and Pima Community College can reach agreement on procedural steps that would provide both parties greater assurance that the Focused Visit process will result in an evidence-based, fair assessment of compliance with HLC criteria. Nevertheless, we are also obligated to prepare for the eventuality that such agreement is not reached and the final

JONES, SKELTON & HOCHULI, P.L.C.

Higher Learning Commission
August 17, 2022
Page 17

decision does not conform with HLC standards, from the perspective of the College. If that occurs, Pima Community College reserves the right to seek arbitration per HLC Policy INST.B.30.020. We note that policy does not contain any details about the arbitration procedures. Please provide those to us or identify where they can be found on the HLC website, as we were not able to locate them.

Your assistance with these requests will be much appreciated. If there is any additional information we may provide to assist with the review of these requests, please do not hesitate to contact us.

Sincerely,



Georgia A. Staton

Ravi Patel

For the Firm

cc: **VIA E-MAIL**
Lee Lambert (llambert@pima.edu)
Chancellor

Jeff Silvyn (jsilvyn@pima.edu)
General Counsel