

May 26, 2020

TO: Maricopa County Community College District

FROM: Daniel C. Barr and Kristine J. Beaudoin  
Perkins Coie LLP

RE: **Investigation Report Concerning Scottsdale Community College's  
Response to Social Media and Community Criticism About Quiz Questions**

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The Maricopa County Community College District ("MCCCD" or the "District") engaged Perkins Coie to conduct an independent investigation into recent events at Scottsdale Community College ("SCC" or the "College"). Specifically, the District asked Perkins Coie to investigate the College's response to community backlash over three quiz questions in a political science course at the College (the "Investigation").

The following report provides an overview of the work that has been performed, as well as a summary of our findings, based on the materials and information reviewed to date. The conclusions expressed in this report reflect only the information and documents reviewed as part of this Investigation, and do not account for any information or materials falling outside the scope of this review. Perkins Coie may amend this report and its conclusions should additional relevant information become known to us or should our understanding of the facts at issue change materially.

## **I. FACTUAL BACKGROUND**

During the evening of April 29, 2020, a student in Dr. Nicholas Damask's World Politics course reached out to Professor Damask via the learning platform Canvas to raise concerns over whether three questions on a recent quiz mischaracterized Islam in an offensive way. The student's concerns over the quiz questions became public after the student posted about the quiz questions on social media and an out-of-state social media influencer highlighted the issue on his own platform. By the next morning, SCC had begun receiving an influx of comments on Instagram and other messages decrying the quiz questions, the professor, and the College.

In response to the sudden wave of negative comments, SCC Interim President Christina Haines issued a public statement on Friday, May 1, 2020 (the "President's Statement"). In this statement, President Haines apologized to the student and the broader community for the "inaccurate" and "inappropriate" quiz questions. Additionally, the statement reported that the instructor would be apologizing to the student, that the student would receive credit for the disputed questions, and that the questions would be removed from any future quizzes.

Ten days later, on the morning of May 11, 2020, MCCCD Interim Chancellor Steven Gonzales issued a letter raising concerns about the College's response to the social media backlash

and apologizing for the “uneven manner” in which the situation was handled and for the College’s “lack of consideration” for the instructor’s academic freedom (the “Chancellor’s Statement”). Chancellor Gonzales also announced the “immediate independent investigation of the facts related to this situation.” Perkins Coie was engaged and began this Investigation that same day.

## **II. INVESTIGATION SCOPE AND PROCESS**

### **A. Scope of Investigation**

MCCCD specifically asked Perkins Coie to investigate two separate, but related, issues regarding the College’s response to social media posts about the quiz questions:

- The facts underlying the College’s response to backlash on social media and from certain community members regarding quiz questions used in Professor Damask’s World Politics quiz, including what, if any, policies and procedures the College followed in deciding to issue the President’s Statement on May 1; and
- Whether the College administration attempted to interfere with the Investigation by creating and circulating a timeline of events after the Investigation was announced.

Perkins Coie was not asked to investigate the nature of the quiz questions or the curriculum of the World Politics course in question. Similarly, Perkins Coie was not asked to reach a legal conclusion as to whether Professor Damask’s academic freedom was violated.

### **B. Document Preservation, Collection, and Review**

On or about May 11, 2020, Perkins Coie began working with MCCCD’s Office of General Counsel to preserve and collect potentially relevant documents. First, MCCCD circulated a legal hold notification and preservation request to the following employees on May 11, 2020:

- Christina Haines;
- Stephanie Fujii;
- Kathleen Iudicello;
- Eric Sells;
- Nicholas Damask;
- Vargha Mohebbi;
- Donna Cole;
- Donna Young;
- Mike Mader;
- Colleen O’Neill; and
- Paul Weser.<sup>1</sup>

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<sup>1</sup> The legal hold notification and preservation request for Paul Weser was sent on May 20, 2020.

Next, in conjunction with Perkins Coie, MCCCCD ran searches through the email vaults of 10 custodians to identify documents that may be relevant to the Investigation. These custodians included the senior administrators involved in drafting the President's Statement, the proposed apology by Professor Damask, and any additional internal or external communications regarding the events in question. The results of these searches were loaded to e-discovery platform NextPoint to allow for a comprehensive document review. Approximately 6,000 potentially relevant documents were ultimately loaded to NextPoint for review.<sup>2</sup>

A member of the District's Office of Public Stewardship conducted a preliminary review of the documents identified under one of the primary searches to flag an initial round of documents considered most responsive. A Perkins Coie attorney reviewed each of those documents. Additionally, Perkins Coie conducted its own searches within the broader universe of documents uploaded to NextPoint to identify any additional relevant communications.

Finally, Perkins Coie collected and reviewed documents and communications provided to the firm via email or in person by the parties interviewed in the course of the Investigation.

### **C. Interviews**

In addition to conducting a targeted document review to identify documents and communications relevant to the Investigation, Perkins Coie attorneys conducted in-person, videoconference, or telephonic interviews with the following MCCCCD employees:

- Christina Haines (Interim President, SCC)
- Stephanie Fujii (Vice President of Academic Affairs, SCC)
- Donna Young (Vice President of Student Affairs, SCC)
- Kathleen Iudicello (Dean of Instruction, SCC)
- Paul Weser (Division Chair, Social & Behavioral Sciences, SCC)
- Nicholas Damask (Instructor, SCC)
- Mike Mader (Program Manager for Student Conduct, SCC)
- Eric Sells (Public Relations Marketing Manager, SCC)
- Matthew Hasson (Director of Communications & Public Relations, District Office)

Perkins Coie, in consultation with MCCCCD, determined that the interviewees named above constituted the District employees who were likely to have the most substantive knowledge about the events of the Investigation.

## **III. FACTUAL FINDINGS REGARDING TIMELINE OF EVENTS**

Based on the aforementioned document review and witness interviews, Perkins Coie has reached certain factual conclusions regarding the events that led to the President's Statement and,

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<sup>2</sup> A large portion of these documents were duplicates, irrelevant, or non-responsive to the scope of the Investigation.

ultimately, the Chancellor's Statement. This section provides a comprehensive overview of the timeline of events. Relevant documents cited within this report are attached in an Appendix, which is organized chronologically by Bates number.<sup>3</sup>

#### **A. Student Communicates with Instructor re: Quiz Questions**

On the evening of Wednesday, April 29, a student in Professor Nicholas Damask's World Politics course sent him a message via Canvas expressing concern over three questions in a recent quiz dealing with the topic of Islamic terrorism. Specifically, the student wrote:

I am contacting you because I recently took quiz 6 and I must say I usually do not feel offended when my religion is talked about, but these questions are absolutely in distaste of Islam, I am a practicing [M]uslim and when reading through these questions I felt disgust in my stomach. I have enjoyed the Course up to this point, I understand the school has a curriculum but I feel I should not let these types of questions just stand. Thank you for your help and cooperation.<sup>4</sup>

Damask responded to the student's email within hours, and attempted to provide additional context for the questions as they related to the course curriculum, noting: "I appreciate your heartfelt response – I wanted to allay some of your concerns by highlighting the fact that the course content isn't 'for' or 'against' anything, but aims to explain international politics." Damask then explained that the "learning goal" of the quiz was about the motivation of terrorists, not whether something is "right" or "wrong" under Islamic doctrine. The instructor encouraged the student to contact him at any time to discuss.<sup>5</sup>

The student emailed Damask again within the hour, attaching the quiz questions to which he objected and noting: "The course may outline these beliefs but that doesn't make it acceptable to teach this misinformation to other student[s] who aren't fully educated. Please review the questions I've attached and get back to me ASAP."<sup>6</sup>

Damask responded the next morning, Thursday, April 30, with more information about the three specific quiz questions the student had identified, noting, "Just to reinforce my email to you last night: these interpretations by the terrorists may be quite wrong-headed. But try not to think about whether the terrorists' beliefs are 'right' or 'wrong' or 'true' – you should approach the discussion thinking simply, *what beliefs motivate them no matter how wrong they may be.*"<sup>7</sup> Damask closed his email with, "Hopefully this is helpful to you – again, please feel free to contact me at any time."<sup>8</sup> At the time that Professor Damask sent this email, he was unaware that his quiz

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<sup>3</sup> Bates numbers are chronological but not sequential. As described in *supra* note 2, not all documents reviewed were responsive to or cited in support of this report.

<sup>4</sup> NDamask.INVEST.000069.

<sup>5</sup> NDamask.INVEST.000068.

<sup>6</sup> NDamask.INVEST.0000296.

<sup>7</sup> NDamask.INVEST.0000295 (emphasis in original).

<sup>8</sup> *Id.*

questions had been posted on social media and drawn a large amount of criticism on the College's Instagram account. Nor was he aware that several people in the College administration had been communicating with each other for approximately three hours on how to respond to this online criticism.

No further communications between the student and instructor related to these quiz questions were identified.

### **B. Quiz Questions Garner Attention on Social Media and Community Members Begin Contacting the College**

At some point early in the morning on April 30, the three quiz questions at issue began circulating on social media. Social media influencer, chemical engineer, and comedian Abdallah Jasim (@abidjay), who lives in Michigan, posted a video on the platforms TikTok and Instagram denouncing the quiz questions as “racist” and “Islamophob[ic].” On TikTok, Jasim captioned the video: “This is ridiculous 😏 Islamophobia at it’s finest! Report this school!!”<sup>9</sup>

In response to the quiz questions being made public, the College and the District began receiving comments from the community via available reporting tools and on SCC's social media platforms. Around 1:30 a.m. on April 30, a non-student community member submitted a comment via SCC's Human Resources Department regarding “Islamophobia in your curriculum and what needs to be done.”<sup>10</sup> By approximately 6:00 a.m., when Public Relations and Marketing Manager Eric Sells emailed SCC administrators to inform them of the situation, the SCC Instagram account had “received a substantial number of angry comments.”<sup>11</sup> And at around 3:00 p.m., the District received a report from a pharmacy student in New York State via the District's web-based discrimination reporting system (the “hotline”).<sup>12</sup>

### **C. The College Tries to Learn More About the Situation and Nature of the Complaint(s)**

The College's administrators initially indicated that they were unsure of how to respond given that they could not identify any formal grievances filed regarding the test. When Sells emailed select administrators first thing Thursday morning regarding the increased Instagram activity, he recommended that the College “request that the offended student contact SCC so we can learn more about the situation.”<sup>13</sup> Vice President of Academic Affairs Stephanie Fujii forwarded Sells' email to Vice President of Student Affairs Donna Young later that morning in an effort to identify which department was responsible for handling the comments, noting that “[i]t's not an instructional grievance” and that it seems as though “students are upset” and their

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<sup>9</sup> See Abdallah Jasim (@abidjay), TikTok (Apr. 30, 2020), <https://www.tiktok.com/@abidjay/video/68215-84870377016581>.

<sup>10</sup> NDamask.INVEST.000025-26.

<sup>11</sup> NDamask.INVEST.0000162.

<sup>12</sup> NDamask.INVEST.000044-45.

<sup>13</sup> NDamask.INVEST.0000162.

“frustrations [are] related to discrimination/racism.”<sup>14</sup> Fujii also instructed other administrators who were informed of the situation not to engage or respond while she tried to identify the correct person to address the situation.<sup>15</sup>

Vice Presidents Fujii and Young decided to refer the situation to Dr. Michael Mader, the Student Conduct Administrator in the Office of the Vice President of Student Affairs.<sup>16</sup> Mader identified the student from the course who raised the initial concerns and spoke to him about the quiz later that afternoon.<sup>17</sup> Notes taken by Mader immediately following the conversation indicate that the student—who admitted that he had not been particularly engaged in the course—informed Mader that he was “offended” by three quiz questions, that he believed the purportedly “correct” answers were “wrong and misinformed,” and that he found the instructor’s responses “confusing and frustrating.”<sup>18</sup> The student indicated that he did not want Professor Damask “punished,” but that he wanted the correct information to be shared and felt Damask should be educated on Islam.<sup>19</sup> Mader shared a summary of his conversation with the student with President Haines, Vice President Young, Sells, and MCCC Police Commander Arlyn Walz.<sup>20</sup>

While Mader was attempting to learn more about what happened from the student’s perspective, Vice President Fujii contacted Social & Behavioral Sciences Division Chair Paul Weser and asked him to look into the situation to help administration “understand a bit more from the instructor’s perspective.”<sup>21</sup> Dr. Weser then called Professor Damask. Damask was unaware of the situation on social media, but informed Weser that he had been exchanging emails with the student about quiz questions over the previous night and into that morning. Damask shared his email exchanges with the student with Weser, who forwarded the emails to Dean of Instruction Kathleen Iudicello later that afternoon.<sup>22</sup>

Weser responded within the hour to Vice President Fujii’s request, noting that he has information about what happened.<sup>23</sup> Fujii requested that Weser work with Dean Iudicello, “as I know she is also working with some of our folks in the different areas (Student Affairs, Marketing)

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<sup>14</sup> NDamask.INVEST.0000180 (“[W]hat/where do you think we should refer. It’s not an instructional grievance and it seems like the students are upset and their comments are frustrations related to discrimination/racism. What/where do you think it would be best to refer?”).

<sup>15</sup> NDamask.INVEST.0000172 (“Wanna talk with DY and see where best makes sense. It’s not an instructional grievance, but it seems like it may be a Title IX complaint nature...”).

<sup>16</sup> NDamask.INVEST.0000180.

<sup>17</sup> NDamask.INVEST.00038; NDamask.INVEST.000042.

<sup>18</sup> NDamask.INVEST.000042.

<sup>19</sup> *Id.*

<sup>20</sup> NDamask.INVEST.000038.

<sup>21</sup> NDamask.INVEST.0000192.

<sup>22</sup> *See, e.g.*, NDamask.INVEST.000068; NDamask.INVEST.0000295. Iudicello forwarded the emails to Fujii the next morning. NDamask.INVEST.000067; NDamask.INVEST.0000294; NDamask.INVEST.0000299. Fujii did not forward the email exchange to President Haines until Wednesday, May 6. NDamask.INVEST.000067. Perkins Coie has not seen any emails or come across any other evidence that Damask’s email responses to the student were considered by the SCC administration in deciding how to respond to the public criticism on social media and elsewhere. NDamask.INVEST.000067; NDamask.INVEST.0000294-98.

<sup>23</sup> NDamask.INVEST.0000198.

who are working to address and manage with our external communities.”<sup>24</sup> Weser followed up with Iudicello and Fujii at around 3:00 p.m., noting he had “the complete information from the instructor” and was available to discuss whenever Iudicello or Fujii were free.<sup>25</sup> Shortly thereafter, Weser and Iudicello discussed the situation, and Weser gave Iudicello contact information for Professor Damask. Weser also forwarded to Iudicello the emails between Damask and the student.<sup>26</sup>

Sometime in the afternoon on Thursday, April 30, Dean Iudicello and Professor Damask had a short, approximately 15-minute conversation. As with many of the conversations that occurred over the course of the next week, both parties to the conversation have different recollections of what was discussed. Although Iudicello and Damask each recall this being a short conversation where they discussed background information, Iudicello claims that Damask admitted his content had not been updated in 20 years, while Damask denies ever saying his course materials were outdated. In support of his contention, Damask notes that several significant events discussed in his course, like 9/11 and the rise of ISIS, have occurred within the last 20 years.

Following Iudicello’s conversation with Damask, Fujii requested that Iudicello ask Damask for a copy of the test, which she did.<sup>27</sup> Fujii shared that she had seen the quiz questions at issue and was upset, as was Chancellor Gonzales and President Haines.<sup>28</sup>

Although Iudicello received a copy of the quiz from Damask,<sup>29</sup> Perkins Coie has not seen any evidence to suggest that the full quiz was reviewed by anyone in senior leadership or that the quiz questions were evaluated in the broader context of the course. Dr. Weser, however, concluded otherwise after he reviewed both the quiz and Damask’s course material, noting that the quiz questions were appropriate when reviewed in the context of the course and Damask’s response to the student.

#### **D. College Shifts Focus to Responding to Social Media Backlash**

In his April 30th email alerting administrators to the social media backlash on Instagram, Eric Sells encouraged the College to respond quickly and firmly.<sup>30</sup> Other than some initial

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<sup>24</sup> NDamask.INVEST.0000206.

<sup>25</sup> NDamask.INVEST.0000233.

<sup>26</sup> NDamask.INVEST.000068; NDamask.INVEST.0000295.

<sup>27</sup> NDamask.INVEST.0000256-57; NDamask.INVEST.0000303.

<sup>28</sup> See, e.g., NDamask.INVEST.0000257 (4:41 p.m. email from Fujii to Iudicello: “Want you to get a copy of the test. It’s pretty bad. Chris is pissed, as am I”); NDamask.INVEST.0000256 (5:00 p.m. email from Fujii to Iudicello: “that would be great – as when I saw it – I understand the offense. this is really, really bad – everyone from the chancellor, chris, all the social media outlets are screaming about SCC as racist institution. not helpful at all in our enrollment efforts. thanks for following up”); NDamask.INVEST.000049 (5:45 p.m. email from Gonzales to Toney: “Chris brought this to my attention earlier and I have viewed the Tik Tok video. If the content of the video is accurate, then clearly this must be addressed swiftly. Will someone follow up with the student who filed the official complaint?”).

<sup>29</sup> NDamask.INVEST.0000447.

<sup>30</sup> See NDamask.INVEST.0000162 (“SCC needs to respond to show that we care and we’re trying to resolve/address the situation.”).



discussion about the nature of the complaint and which office should be responsible for it that morning,<sup>31</sup> once the College learned more about the identities of those involved, the focus of College administrators zeroed in to responding to what was being said on social media.

As the College's public relations director, Sells drove the discussions regarding an outward-facing response, although he was not the only one who identified the need to address the issue quickly.<sup>32</sup>

### **1. Iudicello Has a Longer Conversation with Damask**

At noon on Friday, May 1, Dean Iudicello and Professor Damask had a second telephone conversation. Again, the details of what was discussed in this call are disputed. Damask claims Iudicello told him that the quiz questions were "Islamophobic" and because a pharmacy student in New York reported them to a District hotline, there would be an investigation by the Governing Board. Iudicello claims she did not mention any kind of investigation; rather, she pointed out that because a complaint was made to the District hotline, it goes to the Chancellor's office, and the Governing Board is made aware.<sup>33</sup> According to Iudicello, she shared this with Damask in order to let him know how big the situation had gotten.

In addition to the dispute over mention of an investigation, Iudicello and Damask have different accounts regarding Iudicello raising the possibility of Damask working with a local imam. Iudicello says that, in response to Damask's alleged admission that he had not updated his course content in many years, she suggested Damask consider working with scholars in the field to update his content. In contrast, Damask recalls Iudicello telling him that he needed to take continuing education or religious training on Islam from a local imam.

Notably, both parties agree that Damask expressed concern over his job and that Iudicello responded that she had "heard nothing about" his job being at risk. However, the parties' interpretation of that statement differed dramatically. Damask interpreted Iudicello saying that she had not "heard" anything about his job as an evasive, "canned" response.<sup>34</sup> From Iudicello's perspective, she was reassuring Damask that his job was not at risk.

Shortly after Damask and Iudicello ended their call, around 1:00 p.m., Vice President Fujii emailed Damask the following message:

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<sup>31</sup> See NDamask.INVEST.0000172; NDamask.INVEST.0000180.

<sup>32</sup> See, e.g., NDamask.INVEST.000049 (responding to email regarding hotline complaint, Chancellor Gonzales noted, "Chris brought this to my attention earlier and I have viewed the Tik Tok video. If the content of the video is accurate, then clearly this must be addressed swiftly. Will someone follow up with the student who filed the official complaint?").

<sup>33</sup> The information Iudicello claims to have relayed to Damask likely stems from an email Haines forwarded to Iudicello and Fujii earlier that morning, discussed *infra*, indicating that the Hotline Complaint would be shared with the Governing Board and made public record. NDamask.INVEST.000556-57.

<sup>34</sup> Damask raised this concern with Weser shortly after Damask's call with Iudicello. Weser says he contacted Iudicello, and she used the same "careful" language when Weser asked if Damask's job was at risk.



Dr. Damask,

I understand you have been in conversation with Dr. Iudicello. I appreciate how responsive you are being in our desire to bring this matter to your immediate attention and also in your willingness to address. I have copied Eric Sells on this email and ask that you & Dr. Iudicello schedule time to meet with him ASAP.

Thank you, Stephanie<sup>35</sup>

Damask agreed to assist, noting he was “actually sorry beyond words that all of this is happening to the school.”<sup>36</sup> Professor Damask, Dean Iudicello, and Sells then had a short, 10-minute conference call. As described *infra* in Part III.D.3, the parties agree that some kind of response to the social media attention was discussed, but dispute the nature of that response.

## **2. Sells Drafts the President’s Statement with Input from Senior Leadership**

Later on Friday afternoon, Sells circulated a draft “apology message” for review by senior leadership, including President Haines, Vice President Fujii, Vice President Young, Dean Iudicello, and Vice President of Administrative Services Colleen O’Neill.<sup>37</sup> Sells intended for the letter to come from President Haines and be posted on social media later that day.<sup>38</sup> The initial draft put together by Sells includes the following language (highlighted in the original): “The instructor will be apologizing to the student shortly (and face any disciplinary actions??), and the student will receive credit for the three questions. The questions will be permanently remove[d] from any future tests.”<sup>39</sup>

Vice President Young responded that the draft “sounds good” and pointed out a typo.<sup>40</sup> Vice President Fujii and Dean Iudicello each provided more substantive edits. Fujii removed the language regarding disciplinary actions and added language reading, “SCC’s Administration has addressed with the instructor the offensive nature of the three quiz questions and their contradiction to the college’s values.”<sup>41</sup> In turn, Iudicello proposed removing language that the student would be receiving credit for the three questions.<sup>42</sup> Although Vice President O’Neill did not respond until

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<sup>35</sup> NDamask.INVEST.0000132. Damask explained that he was further alarmed by Fujii’s email addressing him as “Dr. Damask” rather than “Nick.” *Id.* Damask had worked at the College for years, including with Fujii, and nobody called him “Dr. Damask.”

<sup>36</sup> *Id.*

<sup>37</sup> NDamask.INVEST.0000309-10.

<sup>38</sup> *Id.*

<sup>39</sup> NDamask.INVEST.0000310.

<sup>40</sup> NDamask.INVEST.0000315.

<sup>41</sup> NDamask.INVEST.0000474.

<sup>42</sup> NDamask.INVEST.0000470. Iudicello provided her comments to Fujii on top of Fujii’s initial edits, and Fujii then provided comments to Sells on behalf of both Fujii and Iudicello. Notably, Fujii did not adopt any of Iudicello’s edits, including Iudicello’s removal of the statement that the student would be receiving credit for the three questions. NDamask.INVEST.000471; NDamask.INVEST.000474.

after the message was posted, she noted, “I read the last attachment in Stephanie’s email. I think this looks good. Thank you so much for preparing this important message. It truly states SCC’s values.”<sup>43</sup>

At 5:00 p.m. on Friday, May 1, Sells published the President’s Statement on SCC’s Facebook and Instagram pages incorporating feedback from senior leadership:

Earlier this week, a student at Scottsdale Community College took a quiz as part of the class coursework. The student expressed concern over the wording of three questions related to Islam on the quiz.

SCC senior leadership has reviewed the quiz questions and agrees with the student that the content was inaccurate, inappropriate, and not reflective of the inclusive nature of our college. SCC deeply apologizes to the student and to anyone in the broader community who was offended by the material.

SCC Administration has addressed with the instructor the offensive nature of the quiz questions and their contradiction to the college’s values. The instructor will be apologizing to the student shortly, and the student will receive credit for the three questions. The questions will be permanently removed from any future tests.

We applaud the student for bringing this to our attention – and encourage any student or employee to speak out.

SCC does not discriminate on the basis of race, color, national origin, sex, disability or age in our programs or activities. We value inclusiveness because we all benefit by embracing a diversity of voices, viewpoints, and experiences. SCC cultivates success when individuals from a wide variety of backgrounds are respected and empowered to contribute.

Chris Haines  
Interim President  
Scottsdale Community College<sup>44</sup>

From the morning of Thursday, April 30, to when this statement was published on the evening of Friday, May 1, the College kept the District informed about what was happening at a high level. President Haines informed Chancellor Steven Gonzales of the situation on Thursday, April 30, and he requested that somebody “follow up with the student who filed the official complaint.”<sup>45</sup> Haines informed Gonzales that the student “has not filed a complaint,” but felt the

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<sup>43</sup> NDamask.INVEST.000592.

<sup>44</sup> NDamask.INVEST.000578-79.

<sup>45</sup> NDamask.INVEST.000049.

instructor needed to “learn more about Islam.”<sup>46</sup> Teresa Toney, Director of the Office of Public Stewardship at MCCCCD, also shared the hotline complaint with Chancellor Gonzales that evening, noting that “hotline concerns become part of the quarterly reports that go to you for submission to the Board...though a summary of this will be in the 4th quarter report.”<sup>47</sup>

On the public relations side, Sells reached out to Matthew Hasson, the Communications Director for MCCCCD, on Thursday afternoon. Sells alerted Hasson to the social media issue around 3:00 p.m. on Thursday, April 30, and Hasson offered support if needed.<sup>48</sup> The next morning, on Friday, May 1, Sells wrote to Hasson with an update, noting, “President Haines and I have started to discuss potentially issuing an apology -- and/or acknowledgment of the student’s concerns. She is going to speak to the Interim Chancellor today for guidance.”<sup>49</sup> After Hasson asked if the Chancellor was aware of the situation, Sells responded, “Yes he is aware and not happy. He and Chris have been discussing it.”<sup>50</sup> Later that day, Sells emailed Hasson a draft of the apology that was eventually posted to social media with the subject, “Please review -- first draft.”<sup>51</sup> Sells noted that the draft had not yet been circulated to senior leadership because he “wanted to see if there were any huge red flags from [Hasson’s] perspective so that we could fix now vs later.”<sup>52</sup> Hasson responded within 20 minutes and noted, “looks good - no red flags.”<sup>53</sup> Hasson later explained that he saw Sells was communicating with the right people at the College and assumed Sells was in touch with District attorneys, and thus did not pay close attention to the message itself—only grammar and presentation.

Despite keeping certain District officials such as Chancellor Gonzales, Teresa Toney, and Matt Hasson informed on a high-level basis, the SCC administration does not appear to have engaged the District for assistance beyond that, including reaching out to legal counsel for input.

### **3. Communications with Instructor re: Apology Letter**

Over the weekend, Sells turned his attention to drafting the instructor apology referenced in the President’s Statement. It remains unclear how the idea of an instructor apology first surfaced. According to Sells, he went into the Friday, May 1 conversation with Professor Damask and Dean Iudicello with an understanding that Damask had already agreed to issue an apology to the student. In contrast, Damask denies that he ever agreed to issue an apology, and disputes that he was ever asked—as opposed to told—to provide one. Based on the information uncovered in this Investigation, it seems likely that during the Friday, May 1 call between Damask, Iudicello, and

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<sup>46</sup> NDamask.INVEST.000049.

<sup>47</sup> NDamask.INVEST.000556-57. President Haines forwarded this information about the hotline complaint to Fujii and Iudicello on the morning of Friday, May 1, noting, “FYI This will be a public record.” NDamask.INVEST.000556.

<sup>48</sup> NDamask.INVEST.000576.

<sup>49</sup> NDamask.INVEST.000574.

<sup>50</sup> *Id.*

<sup>51</sup> NDamask.INVEST.000604.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Sells, there was a vague conversation about Damask being involved in some sort of response, but the parties effectively talked past each other.

In recalling the conversation, Damask initially agreed that there may have been some nebulous discussion about him having a role in some statement—noting that he “probably mumbled” that he would want to see something first—but later denied that they ever discussed him issuing an apology to the student.<sup>54</sup> Damask understood that, if anything, they were discussing the College’s apology, and believed he would have a chance to look at it. For his part, Sells recalls that during the conversation, they “danced around who was going to write” the apology. Sells’ recollections of Damask’s statements were general—he would “do whatever it takes” and he regretted the situation they were in. Sells also recalls Damask asking that his name not be made public. Sells left the conversation with the understanding that he would be drafting the apology letter himself, something he states he was not fully comfortable doing, but it became clear to him that Damask would not be writing it himself.

Although Sells’ recollection of the conversation could be consistent with a discussion regarding an instructor apology, Sells’ recollection could also be consistent with a broader discussion about the College’s apology, which had not yet gone out. Although it is impossible to know in retrospect what was said, both parties appear to be credibly recounting the conversation as they remember it, and the reality is likely somewhere in between.

Emails exchanged between Sells and Damask over the next few days reflect that both parties had a genuinely different understanding of what occurred on the May 1 call:

- On the morning of Saturday, May 2, Sells emailed President Haines an update on the situation.<sup>55</sup> Among other things, Sells described his call with Iudicello and Damask the previous day: “While it was a short meeting, I wanted to let you know that I don’t think he gets it or understands his responsibility in all of this.”<sup>56</sup> This could be consistent with Sells and Damask misunderstanding each other.
- Later that morning, Damask reached out to Sells after reading the President’s Statement, noting: “I saw Chris’ statement yesterday and was wondering if there was something ‘official’ I was supposed to say to the student?”<sup>57</sup> This is consistent with Damask’s recollection that he does not recall discussing and/or deciding on the call that he would be issuing an apology at any point.
- Sells responded to Damask’s email that morning by noting (in addition to telling Damask to hold off on contacting the student until he gets more information):

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<sup>54</sup> Notably, Damask recalls being in a heightened emotional state at this point and conceded that he was not in a frame of mind to fully internalize what was happening.

<sup>55</sup> NDamask.INVEST.000599-60.

<sup>56</sup> NDamask.INVEST.000599.

<sup>57</sup> NDamask.INVEST.000561.

I know following our meeting yesterday, I had agreed to put together an apology text for you when speaking with your student. The more I've thought about this, the more I believe the apology should be in your own words so that it's 100% authentic and acknowledges the gravity of the situation that was caused. This conversation will be crucial in helping put this situation behind all of us -- and a somewhat scripted apology won't cut it.<sup>58</sup>

This largely contemporaneous email suggests Sells genuinely believed he and Damask discussed an apology letter.<sup>59</sup>

Consistent with Sells' belief that he was responsible for drafting an apology letter on Damask's behalf, on the morning of Sunday, May 3, Sells sent a draft apology letter to Professor Damask, Dr. Mader, and Dean Iudicello for "review and edit."<sup>60</sup> The original draft included the following statement:

Dear [STUDENT]

I am [writing/calling] to express my sincere apology for the offensive material contained in the quiz you took. I know a simple apology may not be enough to address the harm that I caused, but I want to try to make amends.

During this process, I have learned that I need to view the educational material being taught through many perspectives representing our diverse student population at SCC and respecting the many cultures and religions in our world. Not only will the three questions be removed from all future courses, I will be reviewing all of my material to ensure there's no additional insensitivities.

With respect to the quiz you took, you will receive credit for the three questions.

I am truly thankful that you raised this issue as it makes me a better instructor to align with the values at SCC.

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<sup>58</sup> *Id.*

<sup>59</sup> Although the administration later put together a timeline, discussed *infra* at Part III.F, that timeline was not created contemporaneously with these conversations. Although the timeline does not appear to have been created with any ulterior or dishonest motives, because it was created after at least a week had passed, Perkins Coie does not consider the timeline an authoritative source of what happened during those initial days.

<sup>60</sup> NDamask.INVEST.0000113.

Sincerely,  
Nicholas Damask  
Professor, Political Science<sup>61</sup>

Iudicello provided some minor wordsmithing edits later that week but did not have any substantive comments.<sup>62</sup>

Damask reports that upon receiving the draft apology letter, he felt that his job was threatened and that his academic freedoms were being violated. As a result, he engaged faculty counsel and reached out to the Foundation for Individual Rights in Education (“FIRE”) for support.<sup>63</sup>

When Sells followed up with Damask about a response on Tuesday, May 5, Damask responded: “Hi all, still considering the statement, thank you.”<sup>64</sup> Damask never sent anything further regarding the apology statement.

#### **4. Sells Proposes Additional Recommendations for Addressing Situation in the Media Going Forward**

Around 8:30 a.m. on the morning of Thursday, May 7, Sells circulated an email to President Haines, Vice President Young, Vice President Fujii, and Matthew Hasson with the subject “Potential Response Communications - Islamophobia.”<sup>65</sup> Among other things, the email addressed “Additional Response Considerations,” including:

- “Many of the negative comments on Instagram are centered on the perceived lack of disciplinary actions taken against the instructor (most want the instructor fired). Need to address this by communicating: ‘SCC and MCCCCD are reviewing all potential disciplinary actions available. The process takes time for a thorough investigation to be fair to all involved parties.’”
- “When was the last time this course curriculum including quiz was reviewed? In future communications, SCC states that the quiz questions were an oversight on curriculum that had not been reviewed in a while. SCC has since tossed out the questions and related material from all future curriculum. Which leads to...”

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<sup>61</sup> NDamask.INVEST.000563-64.

<sup>62</sup> NDamask.INVEST.000565; NDamask.INVEST.000569.

<sup>63</sup> Sells’ response upon receiving the FIRE letter from Haines and Fujii further suggests that his recollection of the May 1 conversation with Damask was genuinely different than Damask’s recollection. NDamask.INVEST.000602. Sells stated that he felt like he was “in the Twilight Zone” and remarked, “The depiction of the phone call that Kathleen and I had with him last Friday is completely twisted. He agreed to issue the apology AND asked that I help author it -- hence driving my actions around this.” *Id.*

<sup>64</sup> NDamask.INVEST.0000113.

<sup>65</sup> NDamask.INVEST.0000332.



- “The SCC Academic Affairs team and all faculty will review all existing course curriculum for potential cultural insensitivities to ensure the content relates much better to students today. ‘This was a small, isolated incident, however, it gives all of us at SCC a great opportunity to review our curriculum to ensure it meets the current demands for students and our community at large. It’s a necessary process to determine if there’s any additional divisive or racially sensitive content in the curriculum that’s not in line with our values. This will help ensure we are delivering a robust academic experience that is current and sensitive to our highly diverse student body.’”
- “Chris writes an op-ed article . . . explaining this was an isolated incident and emphatically defends SCC—this quiz does not reflect the values or faculty/staff of our college.”
- “Need to identify at least one third-party character witness to defend Chris’ leadership and her absolute focus of diversity and inclusivity at SCC.”
- “Was the class curriculum and quiz 100% authored by the instructor? Comments on social media suggest the exact same quiz wording is being used at Rio—found through a simple google search. It will be important to understand this. Concerns about this issue spreading and pulling in other colleges/MCCCD.”<sup>66</sup>

The only person to offer feedback was Vice President Young, who provided limited comments later that evening.<sup>67</sup> Among other things, Young suggested Sells remove language that this was a “small, isolated incident,” noting that “it sounds like we’re discounting the impact (it was isolated...no big deal).”<sup>68</sup> Perkins Coie did not identify any responses from President Haines, Vice President Fujii, or Hasson.

Approximately two hours later, Sells notified Haines and Fujii, copying Hasson, that the *Arizona Republic* was planning to run a story and had requested comment.<sup>69</sup> Sells proposed a response including the following statements:

- “Out of respect for the student and the instructor, [SCC] is not sharing details regarding the actual class. The three quiz questions had not been reviewed for a while and have been removed from the curriculum.”
- “The Academic Affairs team at SCC is investigating this matter. The process takes time, and we must be fair to all parties involved. We are considering all potential disciplinary actions, if warranted.”

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<sup>66</sup> *Id.*

<sup>67</sup> NDamask.INVEST.0000371-74.

<sup>68</sup> *Id.*

<sup>69</sup> NDamask.INVEST.0000338.

- “This was an isolated incident and does not represent the values of [SCC] and our faculty and staff.”<sup>70</sup>

The final statement did not include the language about potential disciplinary actions and the incident being isolated and not representative of the values of the College. Both Fujii and Haines expressed regret that they could not submit “as strong a statement as what [Sells] crafted.”

#### **E. College Receives FIRE Letter and Professor Damask’s Identity Becomes Publicly Known**

On the evening of Thursday, May 7, the College received a letter from FIRE alleging that SCC violated Professor Damask’s academic freedom by insisting he “issue a pre-written apology,” indicating to Damask that the Governing Board is “investigating the matter,” and warning Damask that his future course content will be subject to review for “insensitivities.”<sup>71</sup>

Around the time the FIRE letter was published, the media began taking an increased interest in the story. Although Perkins Coie was unable to identify who exactly gave Professor Damask’s name to the media, the Investigation has uncovered no evidence to suggest that anybody at the College was responsible for Damask’s name becoming public.

The first instance Perkins Coie has been able to identify of Damask’s name being used publicly was in the FIRE letter, which was sent to the College on Thursday, May 7, and appears to have been posted online that same day.<sup>72</sup> Around that time, Professor Damask gave an interview to Robert Spencer at Front Page Magazine that was published on Friday, May 8.<sup>73</sup> Following this initial article, multiple articles were published identifying Damask by name. Up until that point, the few news articles about the controversy had not contained his name.

#### **F. District Requests Information About Events in the Form of a Timeline**

Following the FIRE letter, the District took a deeper interest in the situation. Chancellor Gonzales reached out to President Haines on Saturday, May 9, and requested that President Haines and her team send him a timeline of events so he could better understand what happened.<sup>74</sup> Over the next 17 hours, Haines, Sells, Fujii, Young, Iudicello, and Mader worked together to create a timeline that reflected their collective recollection of the previous 10 days’ events.<sup>75</sup>

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<sup>70</sup> NDamask.INVEST.0000340.

<sup>71</sup> NDamask.INVEST.0000117; NDamask.INVEST.0000119.

<sup>72</sup> See FIRE Letter to Scottsdale Community College, May 7, 2020, FIRE (May 7, 2020), <https://www.thefire.org/fire-letter-to-scottsdale-community-college-may-7-2020/>.

<sup>73</sup> See Robert Spencer, *Arizona Professor Threatened for Offending Islam, College Demands He Apologize*, Front Page Mag. (May 8, 2020), <https://www.frontpagemag.com/fpm/2020/05/arizona-professor-threatened-offending-islam-robert-spencer/>.

<sup>74</sup> NDamask.INVEST.0000141.

<sup>75</sup> See, e.g., NDamask.INVEST.0000143; NDamask.INVEST.0000150; NDamask.INVEST.000490; NDamask.INVEST.0000485; NDamask.INVEST.000588-91; NDamask.INVEST.0000157.

The timeline was sent to the Chancellor at noon on Sunday, May 10.<sup>76</sup> In the transmittal email, Haines emphasized to Chancellor Gonzales that the College “may take issue with the instructors [sic] quiz, but also support his academic freedom.”<sup>77</sup>

#### **G. The Chancellor Issues Apology and Announces Investigation**

On the morning of May 11, 2020, Chancellor Gonzales sent a letter to District employees and faculty, issued simultaneously as a press release, responding to the backlash over SCC’s response to the quiz questions:

The core function of education is to prepare students to engage critically with the world around them. Often, that means addressing difficult and contentious topics, even when doing so may be uncomfortable. The Maricopa Community Colleges strive to create an environment of respectful engagement where students and faculty can express their own views and learn from others, where all members of the community are welcome and the utmost freedom of inquiry is encouraged.

Last week, posts surfaced on social media raising concerns about three questions on a quiz given in a World Politics course at Scottsdale Community College. The questions were taken out of context from a unit examining violent political and social movements, and the subject they addressed – the reliance of certain violent groups on religious texts as a justification for their actions – was within the scope of the course.

Because the questions were taken out of context, individuals not involved in the class, who viewed the quiz questions posted on social media, drew conclusions about the content of the course. Based on those conclusions, concerns were raised about whether the questions are consistent with the District’s values of tolerance and inclusion of all persons, regardless of their faith or background. Some individuals went further and made threats against the faculty member involved.

To the extent any concerns have been raised by students involved in the course, those concerns have been addressed by direct communication between the faculty member and the student. However, in light of the public discussion of this situation, it is important that the District clarify in this sphere what its values are. Education at our institution is open to all individuals regardless of their beliefs or backgrounds, and we will not tolerate the exclusion of any person based on what they do or do not believe.

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<sup>76</sup> NDamask.INVEST.0000158.

<sup>77</sup> *Id.*

However, we also expect our students and faculty to engage fully with the ideas and perspectives of others, even when they disagree with each other.

That said, I am troubled by what appears to be a rush to judgement in how the college responded to the controversy and the apparent failure to follow policy and procedure in addressing both the student's concerns and the faculty member's rights. I apologize, personally, and on behalf of the Maricopa Community Colleges, for the uneven manner in which this was handled and for our lack of full consideration for our professor's right of academic freedom.

To avoid rushing to judgment a second time, I am announcing the immediate independent investigation of the facts related to this situation. I expect this to be completed with all deliberate speed. Upon conclusion of the investigation, I will ensure appropriate accountability wherever any failures occurred. Also, to clear up misinformation, the MCCCDC Governing Board is not currently involved in an investigation of the professor, nor does it plan to initiate one. Furthermore, it is important to note that the faculty member involved is not in jeopardy of losing his position.

Today, I am announcing the formation of the Committee on Academic Freedom, to be led by Provost Karla Fisher with members identified by the end of the week, to champion academic freedom education and training and to resolve academic freedom disputes in the hope of ensuring this fundamental academic value is better understood and realized alongside our longstanding commitment to the value of inclusion.<sup>78</sup>

Senior leadership at SCC was not given prior notice that this statement would be issued, and it came as a surprise to both administration and other faculty members. In response to the letter, SCC Chair of Chairs Donna Slaughter reached out to Vice President Fujii for more information.<sup>79</sup> Fujii reports that she asked President Haines if she could share a redacted version of the timeline, and upon her approval, revised the timeline accordingly, while also adding a paragraph at the end which read:

**NOTE: It is important to state at no time in any of his conversations/communication exchanges with the college did the Instructor indicate that he did not want, was uncomfortable, refuse the suggestions made by the college to address. Nor did the college ever attempt to coerce, force, demand or threaten that he must.**<sup>80</sup>

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<sup>78</sup> NDamask.INVEST.000580; NDamask.INVEST.000582.

<sup>79</sup> NDamask.INVEST.000543.

<sup>80</sup> NDamask.INVEST.000547 (emphasis in original). Fujii explained that she asked approval to send a redacted version of the timeline, but did *not* seek President Haines' approval to add the bolded language at the end.

Fujii sent this to Slaughter, copying the Faculty Senate President.<sup>81</sup> It appears that Slaughter then distributed that timeline to all division chairs at the College.<sup>82</sup>

Other than Fujii sharing the redacted timeline with the Chair of Chairs and Faculty Senate President, Perkins Coie has not identified any additional material actions taken by College administrators since the Investigation was announced.

## **H. Security / Police Involvement**

Throughout these events, social media comments and reports to the College and District became extremely angry and incendiary. College leadership first reported threatening messages to campus police on Thursday, April 30.<sup>83</sup> These hostile remarks came from community members (locally, nationally, and globally) on both sides of the issue: people protesting the quiz questions and harassing Damask, and people protesting the College's treatment of Damask and harassing senior leadership. Neither side has been spared, and concerns for the safety of both Damask and members of the administration has prompted the College's security team and local police to pay attention to the possibility for violence or property destruction. The evidence indicates that campus police has provided support to all parties involved.

## **IV. POLICIES & PROCEDURES**

MCCCD's Administrative Regulations identify the procedures in place for students to follow in reporting instructional grievances, such as an issue with test questions or issues related to discrimination. MCCCD also has policies for faculty regarding instructional freedom.

### **A. S-6 Instructional Grievance Process**

Under Appendix S-6 to the Administrative Regulations, "[a] student who feels that he/she has been treated unfairly or unjustly by a faculty member (full-time or part-time) with regard to an academic process such as grading, testing or assignments" should adhere to the following procedures in pursuing resolution of his or her instructional grievance:<sup>84</sup>

1. The student "shall discuss the issue first with the faculty member involved" within 15 working days of "the time the student knew or reasonably should have known about the unfair or unjust treatment."
2. If the student cannot resolve the grievance with the faculty member within 10 working days of their request to conference, including if the faculty member is

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<sup>81</sup> NDamask.INVEST.000543.

<sup>82</sup> NDamask.INVEST.000570.

<sup>83</sup> NDamask.INVEST.0000228-30.

<sup>84</sup> Notably, this "instructional grievance process" is specifically *not* intended for cases in which "a student feels he/she has experienced discrimination." For discrimination-based complaints, students are directed to "refer to the Discrimination Complaint Procedures for Students as administered by the Vice President for Student Affairs," described below.

unable to meet with the student, the student may then file a written grievance with the relevant “Department/Division Chairperson” and “appropriate administrative officer at the college/center.” The faculty member must receive the written grievance at least 5 days prior to any “official meetings.”

3. Once a chair receives a written grievance, the chair must “work with the parties in an attempt to resolve the conflict.” Although the chair may request the involvement of the College Faculty Senate President, otherwise, “[e]very attempt will be made to maintain confidentiality during this process.”
4. If the chair is unable to resolve the grievance within 10 working days, the student should bring his or her “original written grievance,” along with “an explanation regarding action taken at each prior level,” to the Vice President of Academic Affairs or her designee. At that point, the dean of instruction or other appropriate administrative officer, the student, faculty member, the College Faculty Senate President (if requested), and Department/Division Chair will meet to attempt to resolve the issues. For grievances regarding grades, this is the final level.
5. If the grievance does not concern grades and is not resolved by the Vice President of Academic Affairs or her designee, the student may forward his or her instructional grievance in writing to the college president, who “will issue a final written determination in the grievance process.” Because “[i]nstructional grievances are resolved at the college level,” students and faculty are not permitted to appeal the President’s decision to the District.<sup>85</sup>

## **B. Discrimination Complaint Procedures for Students**

The Administrative Regulations expressly distinguish between instructional grievances based on “the academic process”—such as “grading, testing, or assignments”—and grievances based on discrimination. For grievances based on discrimination, “[t]he entire college community” is directed to “act promptly upon receipt of an allegation of conduct that might constitute discrimination” and refer the student to these procedures.<sup>86</sup>

The Discrimination Complaint Procedures contemplate both informal and formal resolution of discrimination complaints. Students who wish to bring an informal complaint may seek to resolve the issue of discrimination with the person who allegedly engaged in discriminatory conduct and that person’s supervisor or department chair, who will notify the Vice President of Student Affairs (for purposes of this subsection, the “Vice President”) to assist. Within 15 days of

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<sup>85</sup> MCCCDC Admin. Regs., Student App’x S-6 Instructional Grievance Policy (Mar. 25, 2013), <https://district.maricopa.edu/regulations/admin-regs/appendices/students/s-6> (hereinafter the “MCCCDC Instructional Grievance Policy”).

<sup>86</sup> MCCCDC Admin. Regs., Discrimination Complaint Procedures for Students (Mar. 13, 2012), as amended (Apr. 1, 2015), <https://district.maricopa.edu/legal/student-faculty-resources/harassment/discrimination-complaint-procedures-students> (hereinafter the “MCCCDC Discrimination Complaint Procedures”).



receiving notice of an informal resolution, the Vice President has the authority to modify or reject it if she believes the resolution “is not in the best interests of both the student and the Institution.” If a discrimination complaint “cannot be informally resolved to the satisfaction of the student,” the student can then file a complaint and proceed under formal resolution procedures.

Under the formal complaint procedures, a student alleging “unlawful or MCCCCD-prohibited discrimination” may file a formal complaint verbally or in writing with the Vice President or the District Associate Vice Chancellor of Student Affairs (the “Vice Chancellor”). Upon receipt of a complaint of discrimination, the Vice President or Vice Chancellor must (a) notify the college president or provost and the Office of General Counsel; (b) share a copy or paraphrased version of the complaint with the respondent within 5 working days; and (c) put the respondent on notice that an investigation will be conducted and “retaliation against the complainant or potential witnesses will not be tolerated.” The respondent then has 15 calendar days to file a written response.

After accepting a complaint, the Vice President or Vice Chancellor must designate an investigator to conduct a fact-finding investigation that includes “a review of written evidence (including the complaint and response), and interviews with appropriate employees and students.” Within 90 calendar days of receiving the complaint, the investigator must deliver written findings and the results of the investigation, “including summaries of all interviews and all documents received as part of the investigation,” to the Vice President or Vice Chancellor, who must then submit those findings to the President or Provost along with recommendations for the disposition of the complaint. Within 15 days of receiving the findings and recommendations, the President or Provost “will accept, reject, or modify the recommendations” and notify the student and respondent in writing of his or her action.

If the investigation confirms the student’s allegations, “appropriate corrective action will be taken,” and evidence from the investigation “may be used in subsequent grievance or disciplinary procedures.” Both the complainant and the respondent receive notices of any grievance or disciplinary procedures, and the institution is charged with “tak[ing] appropriate steps to prevent further occurrences.”

If the complainant or respondent is not satisfied with the President or Provost’s final decision, he or she can request administrative review of the decision within 10 days of receiving the decision. Within 10 days of receiving the request for review, the President or Provost will review the results of the investigation and either (a) determine that the decision is “not supported by the evidence,” and reopen and assign the case file for further investigation, or (b) deny the request for administrative review. Once the President or Provost denies a request for administrative review, “the student has exhausted the Internal Discrimination Complaint Procedure.”

### **C. MCCCCD Residential Faculty Policies**

The District’s Residential Faculty Policies (“RFP”) provide for the following “Instructional Rights / Academic Freedom”:

Faculty are entitled to instructional freedom in discussing their subject with students, and they should exercise their best effort to ensure topics are relevant to their subject. Faculty will determine curriculum and relevant subject matter for courses, recommend the appropriate pedagogy, textbooks, and other materials relevant to teaching their subject.

Faculty shall maintain the right and responsibility to determine grades and other evaluations of student performance.<sup>87</sup>

The District's RFP also includes a Professional Code of Ethics. As relevant here, the Code provides, in part:

As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates, even when it leads to findings, practices and conclusions that differ from their own. Professors acknowledge academic debt and strive to be objective in their professional judgment and supervision of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution and for maintaining the highest professional standards through a meaningful culture of peer review.

As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize respectfully and seek revision.

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As members of their community, professors maintain the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.<sup>88</sup>

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<sup>87</sup> MCCCDC Residential Faculty Policies § 3.1 (eff. July 1, 2017).

<sup>88</sup> *Id.*, App'xH.

## V. CONCLUSIONS

1. The District has a policy and procedure for addressing student complaints about being treated unfairly or unjustly by a faculty member with regard to the academic process.<sup>89</sup>
2. To the extent that the student's emails to Professor Damask on April 29 and 30 could be considered an instructional grievance, that policy and procedure was not applied here. The student never filed a written grievance with Division Chair Paul Weser, Department Chair Lisa Marsio, or any other appropriate administrative officer at the College, as is required by the policy.
3. While the student did not file a written grievance, Professor Damask's course material and the quiz in question were reviewed with Damask's permission by Paul Weser, his Division Chair. Dr. Weser concluded that Professor Damask's material and quiz questions were appropriate, as the quiz questions sought to test the students' understanding of what certain terrorist groups believe. Dr. Weser also reviewed Professor Damask's April 29 and 30 email exchange with the student and provided that exchange to Dean of Instruction Kathleen Iudicello. While Dean Iudicello subsequently forwarded Professor Damask's email exchange with the student to Vice President Fujii, who then forwarded them to President Haines, there is no evidence that anyone in the SCC administration further considered the email exchange between Professor Damask and the student or the context of the quiz questions, including Dr. Weser's evaluation that neither the material nor quiz were Islamophobic.
4. The District has a policy and procedure for students filing discrimination complaints against faculty members.<sup>90</sup>
5. To the extent the student's complaint about the quiz questions in his emails to Professor Damask could be considered a discrimination complaint, the MCCCCD Discrimination Complaint Procedures were not followed here. Although the student arguably attempted to resolve the grievance informally with Professor Damask, he did not file any subsequent complaint of discrimination with the Vice President of Student Affairs or anyone else. Indeed, the student informed the representative of the Vice President's office who reached out to him that he did not want the instructor to face disciplinary action.
6. To the extent any of the complaints on social media or directed at the College through other channels were from students, those students did not follow the MCCCCD Discrimination Complaint Procedures. This Investigation revealed no

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<sup>89</sup> MCCCCD Institutional Grievance Policy.

<sup>90</sup> MCCCCD Discrimination Complaint Procedures.

instance of any student filing a formal complaint against Professor Damask with the Vice President of Student Affairs.

7. There is no MCCCDC policy that specifically contemplates or permits disciplining faculty members over the contents of their course material, quizzes, or exams. To the contrary, the RFPs expressly reserve a faculty member's right to "determine curriculum and relevant subject matter for courses, recommend the appropriate pedagogy, textbooks, and other materials relevant to teaching their subject," and "determine grades and other evaluations of student performance."<sup>91</sup>
8. There is no MCCCDC policy that governs procedures for responding to complaints or allegations from non-students relating to faculty, curriculum, or discrimination.
9. The TikTok video that spurred the comments on SCC's social media platforms was posted by a comedian in Michigan with no first-hand knowledge about Professor Damask's course or the context of the quiz. Many of those who posted critical comments on SCC's social media or submitted messages to the College directly live outside Arizona and/or the United States.
10. From the moment that SCC Public Relations/Marketing Manager Eric Sells discovered the critical comments on Instagram, the focus of the SCC administration was deciding how to respond to and placate critics on social media. The administration paid little attention to the actual exchange between the student and Professor Damask or the context of the quiz questions. Instead, the College's focus was responding to people outside of the SCC community in an effort to stop the flow of critical comments on SCC's Instagram account.
11. The effort to respond to the social media posts was led by Sells. While Sells was motivated by good intentions to protect SCC's reputation, Sells has limited experience in higher education and did not appear to have an understanding of the District's policies on academic freedom or procedures for dealing with student complaints. Additionally, the on-boarding process for public relations professionals at the District does not appear to include any training on issues specific to higher education.
12. After the morning of April 30, when Vice President of Student Affairs Donna Young and Vice President of Academic Affairs Stephanie Fujii attempted to determine the nature of the incoming complaints, SCC administration did not give much, if any, consideration to relevant District procedures for dealing with student complaints about faculty.
13. From the morning of April 30, when Sells first became aware of negative comments on social media, until the evening of May 1, when President Haines issued her

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<sup>91</sup> RFP § 3.1.

apology, the SCC administration made little effort to consult with the Office of General Counsel other than to briefly make the General Counsel aware of the negative comments and complaints. Nobody at the College sought advice from the Office of General Counsel before issuing the President's Statement on May 1.

14. Although District officials were made aware of the complaints coming in from outside the College, the District largely left the College to handle the response itself. MCCCCD Communications Direct Matt Hasson offered to help Eric Sells as needed and reviewed drafts of statements, but was not consulted on strategy.
15. The unprecedented situation caused by the COVID-19 pandemic, including SCC administrators working remotely, may have contributed to how SCC responded to the social media posts. As Dr. Mike Mader, the Program Manager for Student Conduct at the Office of the Vice President of Student Affairs, said, "Things could have been different if everybody had sat down in a room and talked."
16. The President's Statement was drafted by Eric Sells and shared with College and District officials before it was published on the evening of May 1. Sells solicited feedback on the draft from Vice President Fujii, Dean Iudicello, Vice President Young, Vice President O'Neill, President Haines, and MCCCCD Communications Director Matt Hasson. Other than Vice President Fujii removing a reference to disciplinary action, very few substantive comments were provided by those asked to review. Both Young and Hasson indicated that they reviewed the draft apology at a high level, looking only at grammar—Young because academic affairs was not her purview, and Hasson because he understood and assumed that Sells was communicating with the appropriate people for feedback, including the Office of General Counsel.
17. Perkins Coie did not come across any evidence that Chancellor Gonzales reviewed or approved the President's Statement prior to it being published.
18. There is no evidence that Vice President Fujii or anyone else in the SCC administration attempted to influence or affect this investigation. On May 9, Chancellor Gonzales asked President Haines and her team to send him a timeline of events related to SCC's response to the social media postings. After the timeline was completed and Chancellor Gonzales issued his statement on May 11, Vice President Fujii asked President Haines if she could share a redacted version of the timeline with the Chair of Chairs, who had requested background information about the Chancellor's Statement. Before sending the redacted timeline to the Chair of Chairs and the Faculty Senate President, who Fujii later copied, Fujii added the following statement to the end of the timeline:

**NOTE: It is important to state at no time in any of his conversations/communication exchanges with the college did**

**the instructor indicate that he did not want, was uncomfortable, refuse the suggestions made by the college to address. Nor did the college ever attempt to coerce, force, demand or threaten that he must.**

Fujii's knowledge regarding Professor Damask's conversations and communications with the College is limited to disputed, second-hand reports from Dean Iudicello and Eric Sells. Fujii herself had no communication with Professor Damask other than an email she sent on Friday, May 1, thanking Professor Damask for his willingness to cooperate. Nevertheless, there is no evidence to suggest that Vice President Fujii did not believe this statement was true when she made it, and Vice President Fujii has indicated that she still believes this statement is true today. While Vice President Fujii may have added the statement to influence the opinion of faculty members who were not involved in SCC's response to the social media posts, there is no evidence that Vice President Fujii attempted to influence this investigation, and there is no evidence that Vice President Fujii's statement influenced any of the people Perkins Coie interviewed.