



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY

---

In the matter of

**ACCREDITING COMMISSION FOR  
COMMUNITY AND JUNIOR COLLEGES,  
WESTERN ASSOCIATION OF SCHOOLS  
AND COLLEGES**

**Docket No. 14-10-O**  
Federal Student Aid Proceeding

Respondent.

---

**DECISION OF THE SECRETARY**

The Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges (ACCJC) has appealed a January 28, 2014, letter (Decision Letter) from the U.S. Department of Education (Department). In the Decision Letter, Acting Assistant Secretary Brenda Dann-Messier (Senior Department Official or SDO) found ACCJC noncompliant with two criteria for departmental recognition. ACCJC requests that I reverse these findings of noncompliance.<sup>1</sup>

Based on the following analysis, I adopt the Decision Letter as the final decision of the Department.

**I. Legal Background**

I described in detail the recognition process in *In the Matter of Northwest Commission on Colleges and Universities*, Dkt. No. 14-07-O, U.S. Dep't of Educ. (Decision of the Secretary) (Dec. 11, 2014). Here I provide only the legal background relevant to the case at hand.

The Department does not directly accredit institutions of higher education (IHEs), but instead recognizes agencies that accredit IHEs. The rules for the Department's recognition process are laid out in section 496 of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. § 1099b (2012).<sup>2</sup> The statute mandates that the Secretary create procedures for the recognition process, but also prescribes specific standards for accrediting agencies.<sup>3</sup>

---

<sup>1</sup> Appeal of Senior Departmental Official Decision (ACCJC Brief), p. 1.

<sup>2</sup> When reauthorizing the HEA, Congress passed the Higher Education Amendments of 1992, Pub. L. No. 102-325 (July 23, 1992), 106 Stat. 448, which, among other things, added § 496 to the HEA within Part H – Program Integrity.

<sup>3</sup> 20 U.S.C. § 1099b(a)(5), (o) (2012); see 34 C.F.R. Part 602, Subpart B – The Criteria for Recognition.

During the recognition process, first the accrediting agency submits an application to the Department.<sup>4</sup> Then, Office of Postsecondary Education (OPE) staff review the application in the context of related data, such as site visit reports, public comments, and complaints against the accrediting agency.<sup>5</sup> OPE may find the agency in compliance with the criteria for recognition, or if it finds deficiencies, OPE provides the agency with 30 days to respond to the findings of deficiency.<sup>6</sup> OPE ultimately forwards the application, any related material, and a recommendation to the National Advisory Committee on Institutional Quality and Integrity (NACIQI).<sup>7</sup>

NACIQI, in turn, considers the OPE recommendation in the context of the provided material. After an open meeting, NACIQI makes its own recommendation and forwards it to the SDO.<sup>8</sup> Finally, considering all the accumulated data and recommendations thus far, including comments from the Department and the accrediting agency on the NACIQI recommendation, and new evidence (in limited circumstances),<sup>9</sup> the SDO makes a decision regarding recognition.<sup>10</sup>

The accrediting agency may appeal the SDO's decision to the Secretary. In this appeal, the Secretary makes a recognition decision *de novo* based on the regulations,<sup>11</sup> but is generally limited to the record before the SDO, because neither the accrediting agency nor the SDO may submit any new evidence.<sup>12</sup>

In the context of this framework, I now consider ACCJC's recognition process.

## II. Factual Background

ACCJC is a recognized accrediting agency that accredits IHEs with the primary mission of granting associate degrees in, among other places, California.<sup>13</sup> The Department previously

---

<sup>4</sup> 34 C.F.R. § 602.31.

<sup>5</sup> *Id.* § 602.32.

<sup>6</sup> *Id.* § 602.32(f).

<sup>7</sup> *Id.* § 602.34(c); *Northwest*, p. 3, n. 12 (describing NACIQI as an 18-member federal advisory committee that, among other things, advises the Secretary on the qualities of accrediting agencies).

<sup>8</sup> 34 C.F.R. § 602.34(g).

<sup>9</sup> The Department and accrediting agency may only submit new documentary evidence if NACIQI proposes to find the accrediting agency noncompliant with a criterion for recognition not previously identified by OPE. *Id.* § 602.35(c).

<sup>10</sup> *Id.* § 602.36.

<sup>11</sup> *Id.* § 602.37(d).

<sup>12</sup> *Id.* § 602.37(c). In limited circumstances, the Secretary may dispose of the case on alternative grounds if new, relevant, and material information comes to the Secretary's attention during the appeal. *Id.* § 602.37(f). No accrediting agency may submit information, or ask others to do so, to invoke this narrowly applied rule. *Id.* § 602.37(g).

<sup>13</sup> While the issues in this appeal primarily concern California, ACCJC also accredits IHEs in Hawaii, the Territories of Guam and American Samoa, the Commonwealth of the Northern Marianas, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. ACCJC was originally recognized by the Department in 1952 as part of the Western College Association. The commission was recognized separately for the first time in 1962. Response on Behalf of Senior Department Official to Accrediting Agency Appeal (ED Brief), Appendix (Appx.) B (Staff Report to the Senior Department Official on Recognition Compliance Issues), p. 5.

reviewed ACCJC’s recognition status in December 2007 at which time NACIQI recommended the Department renew recognition for 5 years.<sup>14</sup> The Department renewed its recognition in 2008.<sup>15</sup>

On August 13, 2013, OPE sent a letter to ACCJC providing findings after review of complaints filed by a number of parties, including the California Federation of Teachers (CFT).<sup>16</sup> OPE found ACCJC noncompliant with certain criteria for recognition. At that time, ACCJC had already submitted an application for another five-year renewal of recognition and requested an expansion of its scope of recognition. In light of the pending application, OPE required ACCJC to correct the areas of noncompliance and to address these actions in its response to the draft staff analysis of ACCJC’s application.<sup>17</sup> ACCJC subsequently provided responses.

In its Final Analysis and Recommendation to NACIQI, OPE recommended findings of noncompliance with regard to several recognition criteria. Two criteria are relevant to this appeal: 1) 34 C.F.R. § 602.13 – Acceptance of the agency by others, and 2) 34 C.F.R. § 602.15 – Academic and Administrative Representatives.

On the first point, OPE found that ACCJC did not meet the § 602.13 requirement because some of its supporting documents constituted “letters of gratitude not letters of support” and almost none of the letters of support were from “educators.”<sup>18</sup> OPE also noted that a number of organizations submitted written comments expressing disagreement with ACCJC policies and actions.<sup>19</sup>

On the second point, OPE found that ACCJC did not meet the § 602.15 requirement because it had inadequate policies. OPE found that ACCJC failed to demonstrate that it had a policy describing what would qualify a person as either primarily an academic or primarily an administrator. OPE also found that ACCJC’s policies failed to ensure in all cases that academics would participate on appeal panels and in evaluation teams.<sup>20</sup> Although ACCJC addressed these issues between the August 13, 2013, CFT Complaint Decision Letter and the December 2013 Final Analysis and Recommendation, OPE concluded that ACCJC’s definition of “academic” still diverged materially from what the Department expected.<sup>21</sup> Furthermore, OPE staff observed a site evaluation team in October 2013 and found that ACCJC was not complying even with its own policies to ensure participation by academics.<sup>22</sup>

On December 12–13, 2013, NACIQI held an open meeting to discuss ACCJC’s application. After significant debate and presentations by ACCJC, OPE, and numerous third-party commenters, NACIQI voted to recommend to the SDO to continue the agency’s

---

<sup>14</sup> *Id.*

<sup>15</sup> Dec. 12 NACIQI Transcript, p. 269.

<sup>16</sup> ED Brief, Appx. C (CFT Complaint Decision Letter), p. 1.

<sup>17</sup> *Id.*, p. 5.

<sup>18</sup> *Id.*, Appx. A, pp. 17–18.

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

<sup>20</sup> *Id.* pp. 35–36.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, p. 35.

recognition and require the agency to come into compliance within 12 months regarding “all issues in the [OPE] staff report.”<sup>23</sup> NACIQI also voted to recommend the denial of expansion of scope as articulated by ACCJC, but to grant an expansion of scope as recommended by OPE.<sup>24</sup>

The SDO followed the recommendations of both OPE and NACIQI, finding that ACCJC did not comply with §§ 602.13 and 602.15(a)(3). The SDO continued ACCJC’s recognition for 12 months to allow ACCJC to come into compliance. The SDO required ACCJC to submit a compliance report within 30 days of the expiration of this 12 month period to allow the Department to make a final recognition decision.<sup>25</sup> ACCJC subsequently filed this appeal.<sup>26</sup>

After both ACCJC and the SDO (through counsel) filed their briefs, ACCJC filed a reply brief with additional exhibits. The SDO has since moved to strike the reply brief. The SDO argues that, after the 30 day appeal period expires, the record is “closed” and no further filings are allowed under the regulations.<sup>27</sup> Furthermore, the SDO asserts that the filing of additional evidence is prohibited by the regulations.<sup>28</sup>

The regulations provide for the accrediting agency to first notify the Secretary and SDO of its intent to appeal, then “[s]ubmit its appeal to the Secretary in writing.”<sup>29</sup> Subsequently, the SDO may file a written response.<sup>30</sup> The regulations do not expressly forbid further filings. The Secretary then makes a recognition decision taking into account, among other things, “the agency’s written submissions on appeal.”<sup>31</sup>

I disagree with the SDO’s interpretation of the effect of a “closed” record. Although the regulations limit what may be submitted as factual evidence in an appeal before the Secretary, they do not expressly limit what briefing can be submitted on the matter. To be sure, the appeal would be ripe for a decision after the SDO files a written response, and the accrediting agency has no express right to file another brief. But I see no reason why the accrediting agency would be foreclosed from requesting leave to file a reply. Such a process is particularly justified where, as here, the accrediting agency asserts that the SDO misrepresented material facts and, for the first time in the proceedings, took a certain position in its response to the appeal.<sup>32</sup> Although ACCJC did not request leave to file its reply, I construe its filing as an implied request to make such a filing, and I grant that request. The SDO’s motion to strike is hereby denied.<sup>33</sup>

---

<sup>23</sup> Dec. 13 NACIQI Transcript, p. 65.

<sup>24</sup> *Id.*, p. 67.

<sup>25</sup> While not at issue in this appeal, the SDO also expanded the scope of ACCJC’s recognition as recommended by NACIQI.

<sup>26</sup> ACCJC’s appeal stayed the Decision Letter.

<sup>27</sup> Senior Departmental Official’s Motion to Strike (ED Motion to Strike), p. 2.

<sup>28</sup> *Id.*

<sup>29</sup> 34 C.F.R. § 602.37(a)(1), (2).

<sup>30</sup> *Id.* § 602.37(b).

<sup>31</sup> *Id.* § 602.37(d).

<sup>32</sup> ACCJC Reply, pp. 1–2.

<sup>33</sup> The SDO also asserts that the content of the reply and the attached appendices are unpersuasive because they are all exhibits or emails previously reviewed by the Department during the recognition process. ED Motion to Strike, p. 3, n. 6. As such, submission of them by ACCJC is not foreclosed by § 602.37(c).

I now turn to the merits of ACCJC’s appeal.

### III. Analysis

ACCJC argues that the SDO erred in two findings of noncompliance. ACCJC also argues that the Department generally violated its right to due process. I will consider each argument in turn.

a. 34 C.F.R. § 602.13(a) – Wide Acceptance by Educators

Under 34 C.F.R. § 602.13, an accrediting agency “must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by,” among others, “[e]ducators and educational institutions.”<sup>34</sup>

ACCJC asserts that it provided “overwhelming evidence of broad-based support from educators.”<sup>35</sup> However, ACCJC argues that the Department inappropriately discounted this evidence and failed to look at additional evidence submitted to bolster the application.<sup>36</sup> ACCJC also asserts the Department allowed itself to be inappropriately influenced by “a disgruntled faction associated with a single institution,” namely the City College of San Francisco (CCSF).<sup>37</sup> Finally, ACCJC claims the Department treated it disparately and unfairly compared to other accrediting agencies.<sup>38</sup>

Based on the following analysis of these arguments, I am unpersuaded by ACCJC and reach the same conclusion as the SDO.

1) The discounting of significant documentary evidence.

ACCJC cites more than 50 letters of support submitted as part of its application, and the characterization of these letters by certain members of the NACIQI, as widespread acceptance by educators.<sup>39</sup> After OPE’s initial review, ACCJC asserts it submitted 50 additional letters to OPE and other documentary evidence, including lists of workshops attended by educators at member institutions.<sup>40</sup> ACCJC challenges the decision by OPE staff to discount some of these letters as not being “from ‘educators’” because the term “educator” is not defined in the HEA or the Department’s regulations.<sup>41</sup> ACCJC defines the term “educator” to include “educational administrators like chancellors and fiscal advisors as well as academics such as faculty and researchers.”<sup>42</sup> Because it asserts this evidence is overwhelmingly in favor of recognition,

---

<sup>34</sup> 34 C.F.R. § 602.13(a).

<sup>35</sup> ACCJC Brief, p. 2.

<sup>36</sup> *Id.*, p. 3.

<sup>37</sup> *Id.*, p. 2.

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

<sup>39</sup> *Id.* p. 4.

<sup>40</sup> *Id.*, pp. 6–7. In its reply, ACCJC clarifies that it submitted a total of 84 exhibits to the Department purportedly showing support from educators and educational institutions. ACCJC Reply, p. 2.

<sup>41</sup> ACCJC Brief, pp. 5–6, and n. 8.

<sup>42</sup> *Id.*, p. 6, n. 8.

ACCJC laments that it does not know what it could possibly submit over the next 12 months to obtain the Department's recognition.

Through counsel, the SDO responds that ACCJC's documentary evidence does not demonstrate compliance with § 602.13(a). The regulation requires separate acceptance by both "educational institutions" and "educators."<sup>43</sup> Because both terms are used in the statute, clearly "educators" are distinct from "educational institutions" in the recognition process.<sup>44</sup> ACCJC's evidence, with one exception, consists of letters from administrators, professional associations, and other entities that do not constitute "educators."<sup>45</sup> Therefore, the SDO argues she properly considered ACCJC's evidence and found it inadequate.<sup>46</sup>

The crux of this issue is how to define the term "educator." A basic tenet of statutory interpretation is that a rule must be read to give each separate word meaning so that none are made superfluous.<sup>47</sup> Clearly, under § 602.13, an educator is not synonymous with an educational institution. A letter from an educational institution or a head administrator on behalf of an institution would not satisfy the separate requirement for educator support.<sup>48</sup>

At the same time, I am not convinced the regulation imposes an unusually narrow definition of the term "educator" without specifically defining the term. While discussing a different recognition criterion in the *Federal Register*, the Department referred to "educators, i.e., academic and administrative personnel."<sup>49</sup> I find that the regulatory scheme separately contemplates "educators" and "educational institutions,"<sup>50</sup> and it subdivides educators into "academic" and "administrative" personnel.<sup>51</sup> Therefore, both academic and administrative personnel can lend support that satisfies the § 602.13 requirement of educator support.

Despite my interpretation of the regulation, I do not find grounds to reach a conclusion different than OPE, NACIQI and the SDO. The recognition process is highly discretionary and relies on the professional experience and common sense of individuals at each level of the process. In this case, OPE staff found ACCJC conspicuously lacking in support from academic faculty, and therefore did not consider ACCJC "widely accepted" by educators. I agree. This conclusion is bolstered where, as here, an entire category of educators withheld support and, in some cases, voiced opposition.

I conclude that OPE, NACIQI and the SDO properly considered ACCJC's documentary evidence and reject its arguments to the contrary.

---

<sup>43</sup> ED Brief, p. 8.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*, pp. 8-9.

<sup>46</sup> *Id.*, p. 10.

<sup>47</sup> *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014).

<sup>48</sup> ACCJC's case is the clearest example of this principle. While the chancellor of CCSF wrote a letter of support for ACCJC, faculty from CCSF inundated both OPE and NACIQI with requests that ACCJC be completely derecognized. To attribute the CCSF chancellor's letter as support from all educators associated with CCSF would be objectively inaccurate in this case and contrary to the regulatory scheme.

<sup>49</sup> 64 Fed. Reg. 56,612, 56,614 (Oct. 20, 1999).

<sup>50</sup> 34 C.F.R. § 602.13(a).

<sup>51</sup> *Id.* § 602.15(a)(3).

- 2) The ignoring of additional evidence discarded due to a technical malfunction in the application system.

Next, ACCJC asserts it submitted additional evidence of educator participation on evaluation teams and in workshops, but a malfunction by the Department's application system caused this evidence to be lost. ACCJC describes the evidence as a large document showing 40 evaluation team rosters from 2012 (including more than 150 educators) and sign-in sheets listing several hundred educators who participated in ACCJC-sponsored workshops and trainings.<sup>52</sup> ACCJC asserts that this evidence "in itself would have been sufficient to find compliance with the broad support criterion" based on the Department's handling of past recognition decisions.<sup>53</sup>

The SDO responds that some of the supposedly lost evidence – workshop rosters – was actually considered and referenced in the final OPE staff report.<sup>54</sup> However, neither OPE nor NACIQI nor the SDO found this evidence persuasive. The SDO notes that, where job titles were included with names, the rosters indicate that the workshops were largely attended by administrators.<sup>55</sup> With regard to the sample team rosters, the SDO states that this document was also submitted with the application, but in a shorter form showing only three site evaluation teams rather than the 40 shown in ACCJC's appendices to its appeal.<sup>56</sup>

Despite ACCJC's assertions about this supposedly dispositive evidence, it offered the same evidence at the NACIQI meeting and failed to persuade a majority of the committee to vote for compliance with § 602.13(a).<sup>57</sup> In any event, the context in which evidence is viewed matters. Participation by educators in workshops may suffice as evidence of educator support in many recognition proceedings, but where an accreditation agency is repeatedly accused of creating a "climate of fear" quashing educators' candid feedback,<sup>58</sup> I am not convinced that the sign-in sheets provided by ACCJC alone demonstrate compliance with the regulation. As OPE, NACIQI and the SDO concluded, ACCJC's application notably lacks affirmative expressions of support from educators.

The additional evidence provided by ACCJC does not compel a finding contrary to that expressed by OPE, NACIQI and the SDO.

- 3) The inappropriate weighting of complaints regarding CCSF's accreditation.

Third, ACCJC asserts that the Department gave undue weight to a coordinated set of complaints about ACCJC's pending action to terminate CCSF's accreditation.<sup>59</sup> ACCJC argues

---

<sup>52</sup> ACCJC Brief, p. 11.

<sup>53</sup> *Id.*, pp. 11–12.

<sup>54</sup> ED Brief, p. 14.

<sup>55</sup> *See, e.g.*, ACCJC Brief, Appx. B2 (only 15 out of 57 roster entries are clearly noted as professors, instructors, faculty, or connected to faculty senates).

<sup>56</sup> ED Motion to Strike, p. 3, n. 6.

<sup>57</sup> Dec. 12 NACIQI Transcript, p. 312 (offering to share the documents that failed to upload with NACIQI members).

<sup>58</sup> *Id.*, pp. 256, 344–45, 367, 391.

<sup>59</sup> ACCJC Brief, pp. 3, 7–8.

that NACIQI's consideration of these complaints constituted an "impermissible basis" for the committee's recommendation.<sup>60</sup>

Specifically, ACCJC cites quotes from two committee members in an attempt to show NACIQI sought to placate CCSF supporters and to impose standards not found in the statute.<sup>61</sup> One quote, from Jill Derby, expresses her desire to acknowledge the participation of CCSF students, to not commit the "serious omission" of ignoring their comments, and to express her opinion that institutions rarely provide third-party comments in NACIQI meetings. The other quote, from Anne Neal, expressed her concern that ACCJC has significant numbers of accreditation standards that allow it to second guess institutions' missions, administration and governance. ACCJC argues that neither quote describes a basis for voting for noncompliance with § 602.13 and that these are the only two examples of analysis from NACIQI members as to why they voted for noncompliance.<sup>62</sup>

In response, the SDO states that the Department gave proper weight to every piece of evidence available at each stage of the recognition process.<sup>63</sup> Thus, the SDO weighed the recommendation of NACIQI along with the comments at the meeting, both from members and third parties, and also weighed the OPE final report.

First, I find that complaints against an accrediting agency are precisely germane to a recognition proceeding, including third-party comments to a NACIQI meeting. At the same time, every participant in the recognition process is expected to view such complaints in the context of the accrediting agency's mission. The multi-tiered recognition process ensures that no single decision maker is unduly influenced as ACCJC suggests is the case here. Therefore, I reject ACCJC's assertion that the CCSF complaints should have been categorically ignored as an "impermissible basis" for a recommendation.

I also find no evidence that OPE, NACIQI or the SDO improperly weighted these complaints over other evidence. Most importantly, I note the finding of noncompliance with § 602.13(a) rests primarily on the definition of the term "educators" and the unpersuasive documentary evidence submitted by ACCJC with its application. The written complaints and third-party comments stemming from the CCSF action only further challenge ACCJC's evidence of support.

I also find that OPE gave an even-handed analysis of the CCSF comments. OPE noted in its report that "[a]lmost all of the [CCSF] comments question whether ACCJC is a reliable authority . . . and many requested that the Department remove the agency from the list of nationally recognized accrediting agencies." However, OPE staff concluded that ACCJC's noncompliance with certain regulatory requirements "do not rise to the level for the Department to recommend denying recognition."<sup>64</sup> OPE staff also specifically considered and rejected most of the commenters' assertions, including that: ACCJC did not evaluate CCSF in light of CCSF's

---

<sup>60</sup> *Id.*, p. 9.

<sup>61</sup> *Id.*, pp. 8–10.

<sup>62</sup> *Id.*, pp. 9–10.

<sup>63</sup> ED Brief, pp. 4, 10–11.

<sup>64</sup> *Id.*, Appx. B, p. 34.

mission; ACCJC inconsistently applied its accreditation standards; ACCJC should not have independently reviewed CCSF after the site evaluation team made its recommendations; and CCSF should have been able to appeal a show cause order.<sup>65</sup> Nevertheless, OPE made findings of noncompliance, and some of these overlapped with CCSF comments.<sup>66</sup>

Like OPE, NACIQI gave an even-handed analysis of CCSF comments at the public meeting. After listening to several CCSF commenters, NACIQI members reminded the commenters that NACIQI would not be adjudicating CCSF's accreditation, but ACCJC's recognition, and asked commenters to stay on that topic.<sup>67</sup> When entreated to deny ACCJC's recognition to "send a strong message to the Assistant Secretary for Postsecondary Education" regarding the CCSF matter, a NACIQI member responded that "an accreditor closing down a school is not a reason to decertify an accreditor. In fact, that is their job."<sup>68</sup>

As for the statements cited by ACCJC, the statement by Jill Derby does not advocate for ignoring the actual requirement of § 602.13(a) and certainly does not demonstrate to me that a majority of NACIQI members did so when they voted. Likewise, while Anne Neal's statement does not set forth the § 602.13 criteria, it does not convince me that a majority of NACIQI voted without proper consideration of the relevant criteria and evidence.

Before Anne Neal made her statement, another committee member, Cam Staples, professed his intent to vote to carve out OPE's § 602.13 and 602.15(a)(3) recommendations because, even if they were correct, he wanted NACIQI "to stop being so caught up in every weed."<sup>69</sup> Yet another NACIQI member expressed his "strong support" for the carve-out because he wanted to commend ACCJC for taking its responsibilities seriously.<sup>70</sup> The transcript demonstrates that NACIQI members considered a wide range of factors when deciding how to vote.

ACCJC asserts that quotes from the minority of NACIQI members prove that the majority erred. I reach the opposite conclusion: the recommendation of a majority of members, who voted after they considered all the evidence and statements both for and against ACCJC's position, is persuasive. Its recommendation is worthy of deference.

I am unconvinced by ACCJC's assertion that OPE or NACIQI recommended a finding of noncompliance with § 602.13(a) on an impermissible basis. I find no reason to reject their recommendations.

- 4) The application of a different standard to ACCJC than to other accrediting agencies.

Finally, ACCJC asserts that OPE staff and NACIQI members held ACCJC to a different standard than other accrediting agencies.

---

<sup>65</sup> *Id.*, pp. 34–36.

<sup>66</sup> *Id.*, p. 38.

<sup>67</sup> Dec. 12 NACIQI Transcript, p. 376.

<sup>68</sup> *Id.*, p. 387.

<sup>69</sup> *Id.*, pp. 60–61.

<sup>70</sup> *Id.*, p. 59.

ACCJC cites recognition proceedings for other accrediting agencies dating back to 2011. ACCJC asserts that other accrediting agencies received recognition despite, for example, demonstrating their wide acceptance by educators solely with evidence of including educators on site teams and in other agency bodies.<sup>71</sup> Because ACCJC's similar evidence did not persuade the SDO, ACCJC asserts the Department has made "an improper and an inconsistent application of this criterion."<sup>72</sup>

In response, the SDO states that the other accrediting agencies mentioned by ACCJC submitted evidence of support from both educators and educational institutions, whereas ACCJC provided inadequate evidence of support from educators.<sup>73</sup> The SDO also notes that language from OPE reports regarding other recognition proceedings do not quote in detail every piece of evidence those accrediting agencies provided.<sup>74</sup> Therefore, ACCJC's comparison of its proceedings to these earlier ones is not relevant.

I agree with the SDO. Recognition is an individualized and discretionary process. The process includes both an initial and final report and recommendation from OPE staff, a public hearing by NACIQI and its recommendation, and then a final review by the SDO. At each phase of the process, the accrediting agency has an opportunity to directly participate. OPE staff and NACIQI members weigh evidence in the context of the specific accrediting agency being reviewed. The differing sizes, policies and missions of accrediting agencies make apples-to-apples comparisons of them, and therefore comparisons of their recognition proceedings, very difficult and of limited value. The language used by OPE staff in a report about a different accrediting agency does not compel me to contradict the consistent recommendations made in this case by OPE and NACIQI, which the SDO found persuasive, based on the evidence available.

As a final matter, I note that ACCJC representatives believed the Department's "issues can be addressed and any necessary changes . . . implemented. We're confident that the ACCJC can demonstrate compliance with all federal criteria in the next 12 months and are pleased to accommodate the accreditation group's request."<sup>75</sup> Furthermore, ACCJC itself pointed out that the Department rarely grants recognition outright, but "has found that agencies petitioning for renewal of recognition have issues or problems that require a 12-month extension . . . including every regional accrediting commission in their most recent recognition review."<sup>76</sup> Thus, ACCJC has admitted that the Department's decision is neither overly burdensome nor unusual compared to decisions issued to other accrediting agencies.

Based on the above analysis, I reach the same conclusion as the SDO. The recommendations of OPE staff and NACIQI are rational and supported by documentary evidence. The arguments and additional evidence cited by ACCJC are unconvincing. ACCJC

---

<sup>71</sup> ACCJC Brief, p. 11.

<sup>72</sup> *Id.*, p. 11.

<sup>73</sup> ED Brief, pp. 7–10.

<sup>74</sup> *Id.*, p. 13, n. 11.

<sup>75</sup> Dec. 12 NACIQI Transcript, p. 307.

<sup>76</sup> *Id.*, p. 308.

should remain recognized, but must provide a report within 12 months from the date of this decision demonstrating its compliance with § 602.13(a).

I next turn to the finding of noncompliance with regard to administrative responsibility.

b. 34 C.F.R. § 602.15(a)(3) – Administrative Responsibility

Under 34 C.F.R. § 602.15, an accrediting agency must have the administrative and fiscal capability of carrying out its accreditation activities. Among the things the accrediting agency must demonstrate is that it has “[a]cademic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions.”<sup>77</sup> In the initial presentation at the NACIQI meeting, OPE summarized, “[ACCJC] did not provide documentation that a representative number of academics serve on site teams . . . . A large part of the issue . . . is the agency’s own definition of an academic representative, which is not comparable with the generally accepted policies and practices within [ACCJC] and wider higher education community.”<sup>78</sup>

ACCJC argues the statute simply requires that an accrediting agency have academic personnel on site teams, that there is no measure of adequacy for the participation of academics on these site teams, and therefore the inclusion of a single academic on a site team satisfies the requirement.<sup>79</sup> ACCJC asserts that the Department is attempting to impose a standard beyond what is required by the statute, mostly in response to the CFT Complaint.<sup>80</sup> Furthermore, ACCJC claims it is being held to a different standard than other accrediting agencies, including those which have stated policies requiring only one academic on a site team.<sup>81</sup>

The SDO argues in response that the absence of the word “adequate” in the statutory language cannot possibly imply that Congress considered “inadequate” participation by academics to satisfy the statute’s objectives.<sup>82</sup> The SDO also points out that ACCJC previously agreed to change its policies with regard to academic participation on site teams.<sup>83</sup> Finally, the SDO states that certain accrediting agencies may require only one academic when those agencies assemble small site teams of three to five members, whereas ACCJC commonly uses site teams of ten members and sometimes more.<sup>84</sup>

Academics are a subset of educators in the regulatory scheme. Yet many professionals in the education world embrace roles that cross the boundaries between academics and administration. Whether policies and actual site teams comply with these recognition criteria is necessarily a subjective analysis. The statute does not expressly require equal representation of both academics and administrators. Nevertheless, I disagree that the criteria can be satisfied by

---

<sup>77</sup> 34 C.F.R. § 602.15(a)(3).

<sup>78</sup> Dec. 12 NACIQI Transcript, pp. 274–275.

<sup>79</sup> ACCJC Brief, pp. 13–15.

<sup>80</sup> *Id.*, p. 14.

<sup>81</sup> *Id.*, p. 15.

<sup>82</sup> ED Brief, p. 16.

<sup>83</sup> *Id.*, p. 15.

<sup>84</sup> *Id.*, p. 16, n. 15.

the presence of a single academic in all cases. In the case of ACCJC, reviewing professionals uniformly agreed that such representation was inadequate and failed to satisfy the regulatory requirement. Accordingly, I reject ACCJC's interpretation of this criterion. Instead, like the SDO, I look to OPE and NACIQI to use their discretion to make recommendations about recognition, including their interpretations and applications of the criteria to each accreditation agency.

Although they are guided by past decisions, OPE staff must use their experience to make a case-by-case recommendation based on each accrediting agency's size, mission and other factors. Each accrediting agency and each circumstance is different, and although OPE cannot act arbitrarily, varying contexts prevent using a rote formula when determining compliance. In this case, OPE and NACIQI both determined that ACCJC was noncompliant with the requirement of academic representation on site teams. OPE found ACCJC's site team composition inadequate even after ACCJC made a required policy change designed to ensure academic representation. I find no grounds for ignoring this evidence of noncompliance or second-guessing the judgment of both OPE and NACIQI in their opinions of what qualifies as academic representation. After evaluating the same evidence OPE and NACIQI considered, I agree with their recommendation.

Therefore, while ACCJC should remain recognized, I adopt the finding that ACCJC is noncompliant with § 602.15(a)(3) and must provide a report within 12 months demonstrating its compliance.

### c. Due Process

ACCJC also argues broadly that the Department violated its right to due process. ACCJC generally asserts that the Department is "subverting due process" by inappropriately denying renewal of its recognition based on complaints from CCSF constituents.<sup>85</sup> In response, the Department asserts that "neither ACCJC nor any other accrediting agency has 'due process' rights to be recognized, nor to be found compliant with one or more of the recognition criteria."<sup>86</sup> ACCJC responds that federal agencies must adhere to procedural due process in making discretionary decisions, and that the Department cannot treat accreditors inconsistently.<sup>87</sup>

ACCJC only had a constitutionally protected right to due process if it had a protected liberty or property interest.<sup>88</sup> ACCJC made no attempt to show that it had such an interest. Further, due process is flexible and calls for such procedural protections as a particular situation demands.<sup>89</sup> The key provision is some form of hearing that allows the individual a meaningful opportunity to be heard.<sup>90</sup> In this case, ACCJC had the benefit of an extensive hearing process. First, ACCJC was evaluated by OPE in a process that allowed ACCJC to submit an application for renewal of recognition, then review preliminary findings, then submit responses and

---

<sup>85</sup> ACCJC Brief, p. 2.

<sup>86</sup> ED Brief, p. 12.

<sup>87</sup> ACCJC Reply, p. 6.

<sup>88</sup> *Ching v. Mayorkas*, 725 F.3d 1149, 1155 (9th Cir. 2013).

<sup>89</sup> *Id.* at 1157.

<sup>90</sup> *Mathews v. Elridge*, 424 U.S. 319, 333 (1975).

additional evidence prior to OPE making a recommendation to NACIQI. Subsequently, ACCJC had the opportunity to appear before NACIQI in person to present, along with OPE employees and other interested parties, live testimony. NACIQI then held an open discussion about the application and ultimately voted on its recommended decision. Then, the SDO considered NACIQI's recommendation and all the available evidence in making her decision. Finally, ACCJC had the opportunity to provide legal briefing to me for a final decision on its application. There can be no doubt that ACCJC had the benefit of a hearing with a meaningful opportunity to be heard.

Contrary to ACCJC's assertions, the Department did not treat ACCJC inconsistently or arbitrarily. The Department provided a reasoned explanation for how the extensive records in recognition proceedings are evaluated. The Department also convincingly showed how the evidence in this proceeding was materially different from that of other accreditors, including the significant opposition from specific subcategories of interested parties. Because accrediting agencies vary in scope, size, mission, and methods, there is no rubric that can be identically applied to each recognition application. In this case, the Department expressed a reasonable basis for finding ACCJC noncompliant with the regulations. OPE, NACIQI and the SDO all made reasoned decisions within their discretion and expertise with regard to ACCJC.

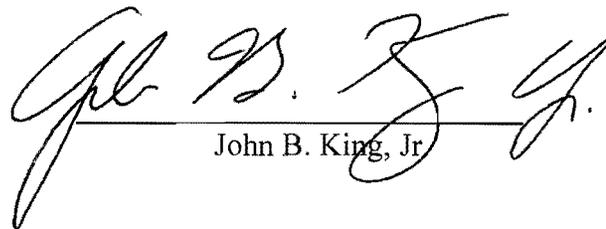
#### **IV. Conclusion**

The record before me supports the recommendations of OPE and NACIQI and the Decision Letter of the SDO. To the extent ACCJC makes other arguments not discussed in this decision, those arguments have been considered and rejected. ACCJC has not persuaded me that any party in the recognition process abused its discretion or failed to give appropriate consideration to any material evidence. I therefore adopt the SDO's conclusions in the Decision Letter.

#### **ORDER**

ACCORDINGLY, the Decision Letter of the Senior Department Official is HEREBY ADOPTED as the Final Decision of the Department. ACCJC is GRANTED continued recognition pending submission of a compliance report on sections 602.13 and 602.15(a)(3) within 12 months from the date of this decision.

So ordered this 4<sup>th</sup> day of January 2016.

  
John B. King, Jr

Washington, D.C.

## Service List

Office of Hearings and Appeals  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dr. Barbara A. Beno, President  
Dr. Sherrill Amador, Chair  
Accrediting Commission for Community  
and Junior Colleges, Western Association  
of Schools and Colleges  
10 Commercial Boulevard, Suite 204  
Novato, CA 94949

Sarah L. Wanner, Esq.  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202