



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

**NORTHWEST COMMISSION ON
COLLEGES AND UNIVERSITIES,**

Docket No. 14-07-O
Accrediting Agency
Recognition Proceeding

Respondent.

DECISION OF THE SECRETARY

This matter comes before me on appeal by the Northwest Commission on Colleges and Universities (“Northwest”) of the January 28, 2014, final decision by the Acting Assistant Secretary (“Senior Department Official” or “SDO”) of the Office of Postsecondary Education (“OPE”) of the U.S. Department of Education (“Department”). The SDO found that Northwest was out of compliance with ten different criteria under the accreditation regulations.¹ Northwest now appeals the final decision on five of the ten findings.²

For the reasons discussed below, I affirm the SDO’s determination in part and reverse it in part.

I.

As a preliminary matter, the distinction must be made between the accreditation of institutions of higher education (“IHE”) and the recognition of those agencies³ responsible for that accreditation process. The accreditation process of IHEs is a combination of work by private nonprofit organizations and the Department. The Department does not accredit individual IHEs, but rather is responsible for reviewing and certifying accrediting organizations. In turn, accreditation agencies are responsible for the evaluation and accreditation of individual

¹ See generally, 34 C.F.R. § 602, *et seq.*

² Northwest does not challenge the SDO’s decision to continue rather than renew Northwest’s accreditation. Further, Northwest does not object to the finding that it must submit a compliance report on five of the ten criteria with which it was found to be noncompliant.

³ Throughout the decision, I use the word “agency.” The use of the term agency is to identify the Northwest Commission on Colleges and Universities and other accrediting agencies, not the Department of Education.

institutions. As a result, the accreditation structure for IHEs is decentralized and complex, especially given the variety of institutions⁴ and accrediting organizations.⁵

The Department typically reviews accreditation agencies every five years to certify that the accreditation agency has sufficient standards in place to ensure that an IHE is of sufficient quality to qualify for federal funding, especially student aid under Title IV of the Higher Education Act of 1965 (“HEA or Title IV”), as amended.⁶ Once an agency has been certified by the Department, the agency is listed as a nationally recognized accreditation agency and acknowledged as a reliable authority on the quality of the education programs for the institutions it accredits.

In reviewing applications for certification or recertification of accreditation agencies, the Department has a very specific list of requirements that the agencies must meet. For example, the Department requires that the accrediting agency address the quality of the institution of higher education’s standards⁷ in the following areas: student achievement in relation to the institution’s mission, curricula, faculty, facilities, fiscal and administrative capacity, student support services, recruiting and admissions practices, measures of program length, student complaints, and record of compliance with Title IV.⁸ Thus, the Department assesses the quality and scope of the accreditation agency’s review of an IHE’s standards as part of the process in certifying an accreditation agency.

Once an accreditation agency files a formal application for consideration or reconsideration of its recognition by the Department, OPE conducts a review of the agency’s application. First, OPE staff reviews the written submission of the accrediting agency. OPE staff also considers observations from site visits, public and other third party comments, and review of complaints involving the agency.⁹ If OPE identifies deficiencies during the course of its review, it prepares a written draft analysis for the agency regarding areas of concern and invites the agency to respond within 30 days.¹⁰ If no deficiencies are identified by OPE, and the Department determines that the agency is in compliance, OPE notifies the agency in writing of the results of the review.¹¹

After its review, if OPE staff makes a determination that the agency has not demonstrated compliance in the thirty days provided, OPE forwards its recommendation to the National Advisory Committee on Institutional Quality and Integrity (“NACIQI” or “Advisory

⁴ Accreditation agencies are responsible for evaluating all types of IHEs, including public and private, for-profit and nonprofit, degree- and non-degree granting, and two- and four-year institutions.

⁵ There are four types of accrediting agencies: regional, faith-based, career-related, and programmatic.

⁶ See generally 20 U.S.C. §1070, *et seq.*

⁷ The accrediting agency applies these standards through several mechanisms. The agency must guide the IHE through an in-depth self-study, and at least one on-site review. The agency also conducts a separate written analysis in response to the results of the self-study and on-site review. The agency must share its written conclusions with the institution, and allow the IHE the opportunity to respond to the on-site review. 34 C.F.R. § 602.23(b).

⁸ See 34 C.F.R. § 602.16(a)(1).

⁹ See 34 C.F.R. § 602.32(b).

¹⁰ See 34 CFR § 602.33(c).

¹¹ See 34 CFR § 602.33(d).

Committee”),¹² to act on the recommendation. OPE provides NACIQI with the agency application and supporting documentation, the staff report and the agency’s response, and any other materials it relied on in developing its analysis.¹³ NACIQI may, notwithstanding the recommendations of OPE staff, make a recommendation to approve, deny, limit, suspend, or terminate recognition. NACIQI may also require the accrediting agency to submit a compliance report pending a final decision.¹⁴ In making its determination, NACIQI typically designates two members (“readers”) to work closely with staff to review the agency’s application, and then the two readers present the agency’s application to the entire committee, which considers the full application and OPE’s recommendations during an open meeting. After this deliberative process, the readers typically make a motion addressing OPE’s recommendations, and then the entire NACIQI votes on the proposed motion. After the meeting, the Advisory Committee then forwards its recommendation to the SDO.¹⁵

The SDO is vested with the Departmental authority to decide whether or not to certify the agency. Further, the SDO may approve, deny, limit, suspend, or terminate recognition of the agency. The SDO may also grant or deny an application for an expansion of scope, revise or affirm the scope of the agency, or continue recognition pending submission and review of a compliance report and review of the report by the senior Department official.¹⁶ In making this determination, the SDO considers the following evidence:

- (1) The materials provided to the Advisory Committee under § 602.34.
- (2) The transcript of the Advisory Committee meeting.
- (3) The recommendation of the Advisory Committee.
- (4) Written comments and responses submitted under § 602.35.
- (5) New evidence submitted in accordance with § 602.35(c) (1).¹⁷

As of July 2010, the Department amended its accreditation regulations to permit an accreditation agency to appeal the SDO’s decision directly to the Secretary.¹⁸ The agency’s appeal stays the SDO’s decision until the Secretary resolves the appeal.¹⁹ In considering the merits of the appeal, the “Secretary renders a final decision after taking into account the senior Department official’s decision, the agency’s written submissions on appeal, the senior

¹² NACIQI is a federal advisory committee that advises the Secretary on matters related to postsecondary (or higher education) accreditation and the eligibility and certification process for higher education institutions to participate in the federal student aid programs. The Committee’s primary function is to provide recommendations to the Secretary concerning whether accrediting entities’ standards are sufficiently rigorous and effective to ensure that the entity is a reliable authority regarding the quality of the education or training provided by the institutions it accredits. See OPE website, <http://www2.ed.gov/about/bdscomm/list/naciqi.html>. The Committee consists of 18 members who are chosen for their knowledge concerning accreditation, education and training beyond secondary education, and on the basis of the individual’s technical qualifications, professional standing, and demonstrated knowledge in the fields of accreditation and administration in higher education. 20 U.S.C. § 1101(c)(b)(2).

¹³ See 34 C.F.R. § 602.34(c).

¹⁴ 34 C.F.R. § 602.34(g).

¹⁵ *Id.*

¹⁶ 34 C.F.R. § 602.36(e).

¹⁷ 34 C.F.R. § 602.36(a).

¹⁸ If the accrediting agency does not appeal, the SDO’s decision is the final decision of the Secretary. See 34 C.F.R. § 602.36(j); see generally, Institutional Eligibility Under the Higher Education Act of 1965, as Amended, and the Secretary’s Recognition of Accrediting Agencies, 74 Fed. Reg. 55,414, 55,433-55,435 (2009).

¹⁹ 34 C.F.R. § 602.37(a).

Department official's response to the appeal, if any, and the entire record before the senior Department official."²⁰ The Secretary then notifies the accreditation agency in writing of the Secretary's decision regarding the agency's recognition.²¹ Finally, any agency may appeal the Secretary's final decision to Federal court; however the final decision rendered by the Secretary is not stayed unless otherwise directed by a court.²²

II.

Northwest is an established accreditation agency responsible for accrediting approximately 158 postsecondary institutions in the Northwest United States (Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington). Northwest was authorized by the Department to grant accreditation and preaccreditation for postsecondary degree-granting institutions in the Northwest and the distance education within these institutions. In 2008, the Department renewed Northwest's recognition for a period of five years.

Consistent with the five-year review cycle, OPE began its review of Northwest's application for recertification in the fall of 2013. On November 6, 2013, OPE conducted an on-site review in Seattle and observed Northwest's evaluator training workshop.²³ After the on-site review, consideration of Northwest's application, and Northwest's response to a preliminary staff report, OPE issued its staff recommendation to the NACIQI for consideration and discussion during NACIQI's December 13, 2013, meeting.

The undated OPE memorandum identified 12 areas of noncompliance.²⁴ Notwithstanding the 12 criteria in alleged noncompliance, OPE recommended that Northwest's recognition be continued but proposed that the agency be provided a 12-month period to come into compliance with the findings.²⁵

On December 13, 2013, NACIQI met in open session to discuss Northwest's application for recertification.²⁶ In its presentation to the Committee with regard to the 12 findings, Northwest notified NACIQI that it would not challenge four of the findings.²⁷ The agency asked

²⁰ 34 C.F.R. § 602.37(d). Effective July 1, 2010, the updated accreditation regulations streamlined the appeal process. The revised regulations removed an agency's right to appeal a decision of NACIQI and made the SDO's determination the final decision of the Department except in cases of appeal to the Secretary.

²¹ *Id.*

²² 34 C.F.R. § 602.38.

²³ Staff Report, p. 4.

²⁴ Staff Report, pp. 2-3.

²⁵ In its application, Northwest had asked that it be granted accreditation responsibility over correspondence programs in the region. OPE advised that Northwest's application for an expansion of scope to include correspondence education be denied. That decision is not on appeal in the matter before me. OPE Staff Report to the Senior Department Official on Recognition Compliance Issues ("Staff Report"), p. 1.

²⁶ The Committee typically assigns two "readers" to take the lead in presenting the application. However, one of the readers was absent during this discussion. Transcript of December 13, 2013, NACIQI meeting ("Transcript"), p. 81.

²⁷ Northwest notified the Committee that it was not asking for reconsideration of 602.15(a) (5) (agency has representatives of public on its decision-making bodies), 602.20(b) (failure to timely enforce accreditation standards), 602.26(d) (notify institution and third parties of accreditation determination with 60 days), and 602.23(c) (appropriate procedures to address a complaint against an IHE). Northwest pledged to provide additional documentation and to work with the Department to come into compliance on these four criteria. Transcript, pp. 88-89.

for reconsideration of seven findings²⁸ and requested clarification of an additional finding from the staff report.²⁹

During the meeting, NACIQI members conducted a thorough review of the application, hearing testimony from both OPE staff and representatives of Northwest. In particular, NACIQI members discussed Northwest's arguments regarding sections 602.24(b),³⁰ 602.15(a) (3),³¹ and 602.19(d).³² Ultimately, on December 13, 2013, the Committee approved a motion to affirm ten of the 12 findings³³ of noncompliance by a vote of 13 to one.³⁴

In response to NACIQI's decision to affirm the ten areas of noncompliance, Northwest wrote the SDO on December 23, 2013, to express its concern and disagreement with five of the ten findings.³⁵ On January 28, 2014, the SDO issued a final Departmental decision affirming NACIQI's recommendations of ten findings of noncompliance.³⁶ On February 26, 2014, Northwest formally appealed the SDO's final decision. The agency now challenges five of the ten findings of noncompliance.³⁷ OPE filed its response to Northwest's appeal on March 25, 2014.

III.

On appeal, Northwest raises the same arguments that it made to the SDO in its December 23, 2013, letter regarding five findings of noncompliance.³⁸ While I review Northwest's appeal *de novo*,³⁹ absent new evidence,⁴⁰ my review is limited to a review of the

²⁸ Northwest asked the Committee to reconsider OPE's findings on sections 602.15(a) (3) (agency has academic staff on its evaluation committees), 602.16(a) (1) (ix) (agency standards address student complaints), 602.16(b) and (c) (appropriate standards addressing education programs and correspondence education). NW does not raise those items on appeal. During the meeting, NW challenged OPE's proposed findings for sections 602.19(b), 602.19(d), 602.24(a), and 602.24(b), and has raised them again on appeal here.

²⁹ Northwest questioned OPE's interpretation of section 602.18(e) and has also raised that issue on appeal.

³⁰ Transcript, p. 103.

³¹ Transcript, p. 111.

³² Transcript, p. 112.

³³ The reader's motion did not include noncompliance findings related to correspondence education because Northwest orally dropped its request to add correspondence education to its portfolio. Transcript, p. 114. The motion also dropped consideration of 602.15(a) (3) (composition of executive committee) because Northwest assured NACIQI that it had provided evidence in response to this finding.

³⁴ Four of the 18 NACIQI members were absent from the final vote. Additionally, one member dissented, asserting that the accreditation regulations, as written, do not provide an accurate assessment of whether an accreditation agency can effectively monitor institutions of higher education.

³⁵ Appendix B, Response of SDO to Accrediting Agency Appeal ("OPE Response").

³⁶ OPE Response, Exhibit A.

³⁷ See Northwest February 26, 2014, Appeal ("Appeal"), p.1.

³⁸ See Appeal.

³⁹ The Department argues that the findings reflect the judgment of highly qualified authorities. The OPE Response notes that every finding at issue has been reviewed by OPE staff, NACIQI, and the SDO. The Department implies that the Department merits additional deference because "the findings must be considered in the context of the comprehensive process that produced them." OPE Response, p. 4. While I recognize the expertise of the individuals who have reviewed Northwest's application, the regulations require that I thoughtfully consider the entire record before me *de novo*. See 34 C.F.R. § 602.37(d); OPE Response, pp. 3-4.

⁴⁰ 34 C.F.R. § 602.37(f).

SDO's decision, the agency's written submissions on appeal, the SDO's response to the appeal, if any, and the entire record before the SDO.⁴¹ I discuss Northwest's arguments below.⁴²

Finding 1: Detailed Written Report – 34 C.F.R. § 602.18(e)

Northwest first challenges the SDO's determination of noncompliance under section 602.18, which concerns how an agency ensures that "the education or training offered by an institution ... is of sufficient quality to achieve its stated objective...." Specifically, subsection (e) requires that an agency "provide[] the institution or program with a *detailed written report* that *clearly identifies any deficiencies* in the institution's or program's compliance with the agency's standards." (Emphasis added.)

The issue on appeal concerns the proper interpretation of the phrase "detailed written report" as stated in 34 CFR § 602.18(e). In support of its position, Northwest submits twelve letters as exhibits. The exhibits consist of comprehensive review notification letters, year three review notification letters, and ad hoc review notification letters.⁴³ In each letter, Northwest notifies an institution of its accreditation status after review by the agency. In the letters, Northwest identifies the issues under review as "recommendations." For example, Exhibit 39, an August 12, 2011, letter to an institution, states that while the institution has been reaffirmed for accreditation, and is "substantially in compliance," recommendations one and two need "improvement." The letter also contains discussion about what steps the institution can take to improve, and a peer-evaluation report with a summary of the recommendations.⁴⁴

Northwest argues that its use of the word "recommendation" in its correspondence with institutions satisfies the requirement of providing an institution with a "detailed written report" as required by 602.18(e).⁴⁵ Northwest adds that OPE's analysis of the regulation is an *ad hoc* determination, contrary to its prior interpretations. It further notes that the Department has never before raised this concern in accreditation reviews.⁴⁶ Northwest concludes that its member institutions understand that they must respond to all recommendations and that none of the institutions have reported any confusion based on Northwest's letters.⁴⁷

OPE counters that Northwest's use of the word "recommendation" in its correspondence does not clearly identify to the institution under review its deficiencies.⁴⁸ Specifically, OPE avers that the term "recommendations" does not satisfy the regulatory requirement because Northwest uses the term "recommendations" in identifying both areas of institutional noncompliance as well as areas where the institution is compliant but needs improvement.⁴⁹ By using the term "recommendation" so broadly, OPE claims that Northwest does not clearly

⁴¹ 34 C.F.R. § 602.37(d).

⁴² I address the five regulatory criteria on appeal in the order they were raised by Northwest in its appeal.

⁴³ See <http://www.nwccu.org/USDEPetition.html>.

⁴⁴ August 12, 2011, letter from Northwest to unnamed (redacted) institution.

⁴⁵ Appeal, p. 2.

⁴⁶ *Id.*, Transcript, pp. 98-99.

⁴⁷ *Id.*

⁴⁸ OPE Response, pp. 6-8.

⁴⁹ OPE Response, p. 6.

identify an institution's deficiencies. Further, OPE contends that "by definition, the term recommendation does not suggest an area of noncompliance that must be remedied with the time frames required..."⁵⁰ OPE contends that Northwest's submitted evidence – in particular, Exhibits 35, 39, and 70 – support its argument because they do not clearly identify the institution's deficiencies.

OPE also argues that the proper test to determine compliance under 602.18 is not whether the written report clearly identifies an institution's deficiencies, but rather whether the "institution knows it will lose accreditation if it does not make the changes recommended."⁵¹ Further, OPE claims that Northwest's practice of using the word "recommendations" disregards the requirement in section 602.20 that an agency specify the time that an institution has to come into compliance with the agency's standards.⁵²

Based on my review of Northwest's exhibits, I conclude that Northwest has met the requirement of 602.18(e) because the language it provides to institutions, as a whole, clearly identifies institutional deficiencies, as is the requirement of the statute. For example, in a letter from Northwest to a college, Northwest states that while the accreditation of the college has been reaffirmed, the institution has not met the Commission's [Northwest's] criteria for accreditation for recommendations one, two, and three. The letter then details the steps needed for the college to come into compliance, and quotes section 602.20 stating that the institution has two years to address and resolve recommendations one, two, and three.⁵³

In concluding, the letter states that for recommendations one, two, and three, the college "must take appropriate action to address and resolve the agency's findings."⁵⁴ The letter adds that the agency reserves the right to take further action if these recommendations are not addressed. The letter also contains a summary page outlining the specific steps that an institution must take to come into compliance.⁵⁵ This example is representative of Northwest's general approach and other letters are similarly structured.⁵⁶ I find that Northwest's use of the term "recommendations" is not confusing in this context because of this additional clarifying language found in the same letter. For that reason, I find that Northwest's letters, which include the use of the word "recommendations," are sufficiently clear to identify the college's deficiencies because the letters make the distinction between recommendations that need improvement and recommendations that require action within two years for the institution to come into compliance. As such, Northwest meets section 602.18(e)'s requirement that it *clearly identify* an institution's deficiencies,⁵⁷ and I reverse the SDO's finding on this provision.

⁵⁰ Staff report, p. 8.

⁵¹ OPE Response, p. 6.

⁵² OPE Response, pp. 6-7.

⁵³ See Agency Exhibit 35, August 2, 2011, letter to unnamed (redacted) college, p. 1.

⁵⁴ *Id.*

⁵⁵ See Agency Exhibit 35, p. 3.

⁵⁶ See Agency Exhibit 70, February 4, 2013, letter to unnamed (redacted) college, p.1.

⁵⁷ Similarly, Exhibit 70 distinguishes between Northwest's recommendation that must be addressed within a two-year period (recommendation four) and those that merely are in need of improvement (recommendations one, two, three, five and six). The enclosure then specifies the steps that the institution must take in response to the recommendations. As with Exhibit 35, I found that this level of specificity in the letter satisfies the "clearly identify" standard.

Finding 2: Monitoring – 34 C.F.R. § 602.19(b)

Northwest next challenges the SDO’s finding of noncompliance on section 602.19(b), concerning how agencies ensure continued compliance with the standards they set out through monitoring. The regulation at issue provides –

(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution’s or program’s continued compliance with agency standards.... These approaches must include *periodic reports*, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, *fiscal information and measures of student achievement*, consistent with the provisions of § 602.16(f).⁵⁸ This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion. (Emphasis added.)

In support of its argument, Northwest submits twenty-one exhibits. The exhibits consist of a variety of reports prepared by both institutions and the agency. The institutional reports include self-studies and peer review reports. The exhibits also include a variety of reports completed by Northwest, including peer reviews and third- and seventh-year self-evaluations. The exhibits submitted by Northwest, such as Exhibit 133, provide written reports of Northwest’s review of the institution. These documents are detailed monitoring reports of all aspects of the institution’s operation, including fiscal information and measures of student achievement, and also contain recommendations at the end of each document.⁵⁹

Northwest contends that it has provided multiple examples of its ongoing monitoring efforts of the institutions it accredits. Northwest argues that the exhibits demonstrate that it has carried out the appropriate monitoring and include examples where it focused on fiscal information and measures of student achievement.⁶⁰ Northwest adds these monitoring efforts are in addition to its one-year, three-year and seven-year monitoring protocols.⁶¹

OPE counters that Northwest has not demonstrated compliance with the provisions of the regulation because it fails to provide sample reviews of fiscal information and measures of student achievement “that occur *outside* of the Year Seven comprehensive review.”⁶² (Emphasis added.)

I find that Northwest is compliant with this regulation. First, OPE’s staff report admits that “the agency’s approach to monitoring appears to be compliant with the requirements of the

⁵⁸ Section 602.16(f) provides that nothing in paragraph (a) of this section restricts — (1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency; or (2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

⁵⁹ See Northwest Exhibit 133, sample year-three peer evaluation report.

⁶⁰ Appeal, pp. 2-3.

⁶¹ Appeal, p. 2.

⁶² OPE Response, p. 9, Staff report, pp. 9-10.

section....”⁶³ However, the staff report continues that “the agency must provide evidence of its application of such approaches: namely, sample reviews of fiscal information and measures of student achievement that occur outside of the Year Seven comprehensive review.⁶⁴ I disagree with this conclusion and find that Northwest’s exhibits demonstrate that the agency has carried out monitoring on a periodic basis, and has appropriately focused on fiscal matters and student achievement.⁶⁵ It is my determination that its approach has enabled it to identify any problems with an institution’s continued compliance with its standards, which is the purpose of the regulation at issue.

Moreover, the text of the regulation requires that the agency have “monitoring and evaluation approaches” for examining fiscal information and measures of student achievement.⁶⁶ The regulation also calls for *periodic* reports, but it does not mandate *annual* reports.⁶⁷ By my review, OPE did not provide support for its argument that Northwest’s monitoring reports must occur “outside” its normal monitoring protocol. As such, I am not persuaded by OPE’s assertion that any evidence provided by an agency must be separate from the agency’s existing monitoring protocol, in this case a seven-year monitoring plan that provides for three periodic reviews at years one, three, and seven. OPE’s restrictive reading of section 602.19(b) is contrary to the plain language of the regulation that requires an agency to maintain “monitoring and evaluation approaches” on a periodic basis.⁶⁸ In sum, I reverse the decision of the SDO as to section 602.19(b).

Finding 3: Significant Enrollment Growth – 34 C.F.R. § 602.19(d)

Northwest’s third challenge to the SDO’s final decision of noncompliance concerns the requirement that agencies monitor significant enrollment growth at their institutions.⁶⁹ Specifically, 34 C.F.R. § 602.19(d) requires that –

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

Northwest submits that it has demonstrated successful monitoring of programs with significant enrollment growth and cites four exhibits.⁷⁰ For example, Northwest claims that Exhibit 93 (a letter from Northwest to an unnamed institution) demonstrates that it required an institution to provide a report on several new programs in response to a self-evaluation report submitted by the institution. In particular, the letter states that Northwest has determined that the institution has not provided sufficient evidence regarding the growth in its programs, and must submit a response within four months in order to be considered for reaccreditation.⁷¹ Northwest

⁶³ Staff report, 9.

⁶⁴ *Id.*

⁶⁵ See Agency Exhibits 33, 45, 68, 87, 88, and 146.

⁶⁶ 34 CFR § 602.19(b).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Staff report, p. 10.

⁷⁰ See Agency Exhibits 93, 94, 95, and 174.

⁷¹ See Agency Exhibit 93.

claims that the exhibits demonstrate sufficient monitoring to satisfy the plain language of the regulation.⁷²

OPE argues that the Department cannot be certain that Northwest conducts regular monitoring of institutions experiencing significant growth because the reviews were not conducted during reviews of annual reports. OPE notes that Northwest's monitoring of growth arose "in the course of Northwest reviews conducted for other reasons."⁷³ In short, OPE contends that none of Northwest's monitoring for significant growth arose from Northwest's review of annual reports for enrollment growth.⁷⁴

On review of the record, I note that the OPE staff report stated that Northwest "provided evidence of how its review of an annual report led to the discovery of unreported substantive changes."⁷⁵ Further, the regulation permits *the agency* to define the term "substantial growth," and requires only that the agency monitor such growth,⁷⁶ without specifying the type of report the agency must use to monitor growth.⁷⁷ Because Northwest has submitted evidence that it has monitored substantial growth in its member institutions⁷⁸ and has met the broad and general requirements of the regulation, I find in favor of Northwest.

Finding 4: Branch Campuses – 34 C.F.R. § 602.24(a)

Next, Northwest contends that the SDO erred in finding that it did not comply with 602.24(a)'s directive on monitoring branch campuses, which states:

If the agency is an institutional accrediting agency...the agency must demonstrate that it has established and uses all of the following procedures:

(a) *Branch campus.*

(1) The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

- (i) The educational program to be offered at the branch campus;
- (ii) The projected revenues and expenditures and cash flow at the branch campus; and
- (iii) The operation, management, and physical resources at the branch campus.

⁷² Appeal, p. 3.

⁷³ Staff report, p. 9.

⁷⁴ OPE Response, p. 11.

⁷⁵ Staff report, p. 10.

⁷⁶ Northwest has defined "significant growth" as growth by a total of more than 50% over two years. OPE did not challenge this definition. Staff report, p. 10.

⁷⁷ 34 C.F.R. § 602.19(d).

⁷⁸ See Agency Exhibits 93, 94, 95, 96, and 174.

(2) The agency may extend accreditation to the branch campus *only after* it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards. (Emphasis added.)

(3) The agency must undertake a site visit to the branch campus as soon as practicable, but no later than six months after the establishment of that campus.

Northwest argues that it is in compliance with this requirement. In support of its argument, Northwest cites Exhibit 124. Exhibit 124 is a detailed Ad Hoc Evaluation Report of a law school that provides an overview and analysis of all facets of the institution, including governance, human resources, and student support resources. Northwest claims that the exhibit serves as an example showing that it has effectively monitored an institution for a new branch campus. Northwest notes that Exhibit 124 contains both the institution's initial proposal as well as Northwest's peer evaluation report that was written after a site visit.⁷⁹ While Exhibit 124 contains information that Northwest had approved the branch campus, the report does not contain an agency decision letter or any other document showing Northwest's analysis regarding the creation of a branch campus.⁸⁰

OPE responds that the regulation articulates several very specific requirements, including institutional submissions, agency review of a business plan, and agency site visit within six months after the establishment of a campus. OPE argues that Exhibit 124 merely outlines steps taken by Northwest *after* it had approved the branch campus and does not contain any evidence that Northwest met any of the regulation's requirements before the branch campus was approved. OPE adds that the other three exhibits that Northwest cites – 133, 134, and 135 – also document its oversight of the branch campus *after* the branch campus had been established and, for this reason, are not germane to the consideration.⁸¹ (Emphasis added.)

It is clear from a review of the record that Northwest has not provided any evidence that it followed the specific requirements of the provision prior to the approval of a branch campus. By the facts and plain language of the regulation, Northwest has failed to meet the Department's requirements here. The SDO's determination on this finding is therefore sustained.

Finding 5: Change in Ownership – 34 C.F.R. § 602.24(b)

Finally, Northwest challenges the SDO's finding under 34 C.F.R. § 602.24(b). The staff report found, and the SDO agreed, that the agency's statement in a letter that it had elected not to make a site visit after a change in ownership violated the plain language of the regulation.⁸²

The regulation at issue provides –

⁷⁹ See Transcript, p. 103, Agency's Exhibit 124 and Appeal, p. 3; see also 34 CFR § 602.24(a)(2).

⁸⁰ See Agency Exhibit 124.

⁸¹ OPE Response, pp. 12-13.

⁸² Staff report, p. 14.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures...

(b) Change in ownership. The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.

Northwest notes that during the review period, the agency had only one instance where an institution was undergoing a change of ownership. In that case, Northwest already had scheduled a separate monitoring visit when it learned of the change of ownership, and that monitoring visit fell within the six-month period after the change of ownership. As a result, Northwest did not make a separate site visit to the institution to discuss the change in ownership issue. Northwest argues that its monitoring visit to the institution within the six-month period satisfies the spirit of the regulation.⁸³

OPE responds that Northwest has not demonstrated that it has complied with the plain language of the regulation. It is undisputed that Northwest did not conduct a site visit as a result of the change of ownership within the mandated six-month period.⁸⁴ Further, OPE noted that Northwest's Exhibit 136⁸⁵ explicitly states that Northwest would not make a site visit to the institution because the agency concluded that the change in ownership would not "materially affect the mission and goals of the institution."⁸⁶ OPE cites this exhibit as definitive evidence that Northwest did not comply with the regulation despite its knowledge of its terms.

I find that Northwest has failed to demonstrate that it met the requirements and intent of 34 C.F.R. § 602.24(b). First, Northwest has not provided any evidence that any site visit actually took place within the required six-month period after notification of a change in ownership. The exhibits cited by Northwest concern a different institution, and the documents are sample letters requesting a meeting with the new ownership. Accordingly, they are irrelevant to this finding. Northwest also includes a third-year report from that same institution, but the document is inconclusive as to whether a site visit took place. Further, even assuming *arguendo* that the monitoring visit did take place, Exhibit 136 demonstrates that Northwest had no intention of using any visit—monitoring or otherwise—for the purpose of evaluating the impact of the change in ownership, despite clear knowledge of the requirements of 602.24(b).⁸⁷ Thus, the record clearly supports the SDO's determination on this finding, and Northwest has failed to refute the evidence. For these reasons, I sustain the SDO's determination on this finding.

For the reasons cited above, I affirm the SDO's finding of noncompliance on sections 602.24(a) and 602.24(b) and reverse as to sections 602.18(e), 602.19(b), and 602.19(d).

⁸³ See December 23, 2013, letter from Northwest to the SDO, p. 3.

⁸⁴ Transcript, pp. 108-109.

⁸⁵ See July 17, 2006, letter from Northwest to unnamed (redacted) institution.

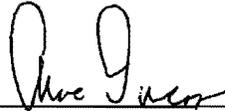
⁸⁶ *Id.*

⁸⁷ Exhibit 136 explicitly cites 34 C.F.R. § 602.24(b).

ORDER

ACCORDINGLY, the decision by the Senior Department Official is HEREBY AFFIRMED in Part and REVERSED in Part as the Final Decision of the Department. Respondent is FURTHER GRANTED continued recognition pending the submission of a compliance report on sections 602.24(a) and 602.24(b) within 12 months.

So ordered this 11th day of December 2014.

A handwritten signature in black ink, appearing to read "Arne Duncan", is written over a horizontal line.

Arne Duncan

Washington, D.C.

Service List

Office of Hearings and Appeals
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4616

Ms. Sandra E. Elman
President
Northwest Commission on Colleges and Universities
8060 165th Ave., N.E., Suite 100
Redmond, WA 98052-3981

Ms. Sarah Wanner, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2110