



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of:

**ACCREDITING COUNCIL FOR
INDEPENDENT COLLEGES AND SCHOOLS**

Docket No. 16-44-O
Accrediting Agency
Recognition Proceeding

Respondent.

DECISION OF THE SECRETARY

The Accrediting Council for Independent Colleges and Schools (ACICS or agency) has appealed a September 22, 2016, letter (Decision Letter) regarding its recognition status from the Senior Department Official (SDO) at the U.S. Department of Education (Department). In the Decision Letter, SDO Emma Vadehra found ACICS noncompliant with numerous regulatory criteria for departmental recognition and, accordingly, withdrew and terminated the Department's recognition of ACICS as a nationally recognized accrediting agency.¹ ACICS requests that I reverse that decision and exercise discretion to continue the agency's recognition for a period of 12 months or less, or, alternatively, return its petition for recognition (petition) to the Department's staff and/or the National Advisory Committee on Institutional Quality and Integrity (NACIQI) for reconsideration.² Counsel for the SDO has filed an opposition brief urging that I uphold the SDO's decision.³ ACICS also filed a reply brief (and later, supplementary exhibits) in which it for the first time requested an additional hearing to present further argument on this matter.⁴

After a *de novo* review of the entirety of the record, I find ACICS to be out of compliance with numerous regulatory criteria. Because of the nature and scope of ACICS's pervasive noncompliance, I further conclude that ACICS is not capable of coming into compliance within 12 months or less, even if I renewed its recognition for an additional 12 months. I therefore adopt the SDO decision and withdraw and terminate the Department's recognition of ACICS as a recognized accrediting agency.

¹ Decision Letter, p. 3.

² Appeal of Senior Departmental Official Decision (ACICS Brief), p. 3.

³ Brief on Behalf of Senior Department Official (SDO Brief).

⁴ ACICS's Response to the SDO's Brief in Opposition to ACICS's Appeal (ACICS Reply Brief), p. 7.

I. Legal & Procedural Background

This Office has previously 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 briefly summarize legal and procedural 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 established in section 496 of the Higher Education Act of 1965 (HEA), as amended, 20 U.S.C. § 1099b (2012), and implemented by regulations at 34 C.F.R. Part 602.⁵ The statute mandates that the Secretary create procedures for the recognition process, but also prescribes specific standards for accrediting agencies.⁶

To begin the recognition process, first the accrediting agency submits a petition to the Department.⁷ Then, Department staff review the application in the context of related data such as site visit reports, public comments, and complaints against the accrediting agency.⁸ Department staff may find the agency in compliance with the criteria for recognition, or, if the staff identifies deficiencies, the staff must provide the agency with 30 days to respond to the findings of deficiency.⁹ Department staff ultimately forward the petition, any related materials, and a recommendation to NACIQI, an independent body composed of 18 appointed members with diverse backgrounds and political viewpoints, chosen specifically for their impartiality and experience with and knowledge of accreditation and administration in higher education.¹⁰

NACIQI, in turn, considers the Department staff recommendation in the context of the provided materials and holds an open meeting where public comment is accepted.¹¹ After that meeting, NACIQI makes its own recommendation and forwards it to the SDO.¹² Both the agency and Department staff may subsequently submit comments to the SDO, but neither may submit additional documentary evidence unless NACIQI found the agency noncompliant with a criterion not identified in the Department's original analysis.¹³ Finally, the SDO makes a decision regarding recognition, taking into consideration the independent recommendations of the Department staff and NACIQI and any comments submitted by the parties.¹⁴

⁵ 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.

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

⁷ 34 C.F.R. § 602.31.

⁸ *Id.* § 602.32.

⁹ *Id.* § 602.32(f).

¹⁰ 20 U.S.C. § 1011c (2016).

¹¹ 34 C.F.R. § 602.34 (e) (providing that NACIQI should “invite[] Department staff, the agency, and other interested parties to make oral presentations during the meeting”).

¹² *Id.* § 602.34(g).

¹³ *Id.* § 602.35.

¹⁴ *Id.* § 602.36.

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 regulations¹⁵ and the entire record before the SDO.¹⁶ Approval of recognition requires that the agency can show that it both complies with, and effectively applies, the criteria for recognition.¹⁷ If the agency is noncompliant with the requirements or fails to effectively apply the criteria, the Secretary will deny, limit, suspend, or terminate recognition.¹⁸ Alternatively, where there is a finding of noncompliance, the Secretary may, in his or her discretion, continue recognition of an agency pending submission of a compliance report, but only if the Secretary "concludes that the agency *will* demonstrate or achieve compliance with the criteria for recognition and effective application of those criteria within 12 months or less."¹⁹

In the context of this framework, I now consider ACICS's petition for renewal of recognition.

II. Factual Background

ACICS is a previously-recognized national accrediting agency with the primary mission of accrediting "institutions that offer programs in professional, technical, and occupational fields . . . through the Master's Degree level."²⁰ The Department last reviewed ACICS's recognition status in 2011 at which time NACIQI recommended the Department continue ACICS's recognition, but require a compliance report in 12 months to address certain issues.²¹ NACIQI accepted the agency's compliance report at its meeting in June 2013 and the agency's recognition continued for the subsequent three years.²²

In 2016, the Department began considering ACICS's petition to renew its recognition once again. Department staff conducted a review and, in a thorough and detailed analysis, found ACICS in violation of 21 separate recognition criteria set forth in the regulations.²³ Based on the 21 violations, Department staff issued a recommendation to NACIQI to deny ACICS's petition and withdraw ACICS's recognition.²⁴

At the June 23, 2016, NACIQI meeting, the committee considered ACICS's petition and the Department staff recommendation, as well as presentations by Department staff, ACICS and

¹⁵ *Id.* § 602.37(d).

¹⁶ The Secretary issues a recognition decision using the same standards as the SDO decision. *Id.* § 602.37(d) (citing *Id.* § 602.36(e)). Neither the agency nor the SDO may submit additional evidence on appeal to the Secretary. *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).

¹⁷ *Id.* § 602.36(e)(1).

¹⁸ *Id.* § 602.36(e)(2).

¹⁹ *Id.* § 602.36(e)(3) (emphasis added).

²⁰ See <http://www.acics.org/>; see also Staff Report to the Senior Department Official on Recognition Compliance Issues (Staff Report), p. 1.

²¹ Staff Report, p. 4.

²² *Id.*

²³ See generally *id.*

²⁴ *Id.*, p. 1.

third party commenters. During the meeting, which lasted approximately 11 hours from open to adjournment, NACIQI comprehensively reviewed the record and presentations.²⁵ The committee considered the evidence of pervasive noncompliance by ACICS, including evidence that it had struggled to achieve rigorous and effective implementation of its standards, and the Department staff's findings of violations.²⁶ There was also extensive discussion of ACICS's assertions of progress toward compliance and request for an extension of recognition to continue these efforts.²⁷ It also heard opinions from experienced Department staff members, NACIQI committee members, and third party commenters that ACICS could not possibly achieve compliance within 12 months.²⁸ While certain NACIQI members praised ACICS's efforts or raised questions about the process and the Department staff recommendation, the committee ultimately voted 10-3 to recommend to the SDO that ACICS's petition be denied.²⁹

The record reflects that, as required, the SDO considered the full record and further comments from the Department and ACICS. Based on that review, she concurred with the recommendations of both the Department staff and NACIQI. The SDO therefore decided to deny ACICS's request for renewal of recognition and withdrew ACICS's recognition.³⁰

I now turn to the merits of ACICS's appeal.

III. Analysis

ACICS primarily argues that the SDO erred in three ways. First, ACICS asserts that the Decision Letter "is not supported by substantial evidence." Notably, ACICS does not attempt to argue that it is in full compliance or that it should receive recognition without condition. Instead, ACICS argues, and improperly attempts to introduce new evidence on appeal to demonstrate, that it can come into compliance and demonstrate effective implementation of the criteria within a period of 12 months and that therefore ACICS should be granted such time to achieve full

²⁵ See generally NACIQI Transcript.

²⁶ Typical of the type of observations made at the meeting, one NACIQI member described the list of issues found by Department staff to be "exhaustive" and particularly noted that the problems found by Department staff, "particularly those that are organized around the application of its standards, the monitoring and the enforcement of its standards" raised profound questions about the quality and reliability of the agency. See *id.*, pp. 13, 277.

²⁷ See, e.g., *id.*, pp. 67-142 (presentation by ACICS and questioning by NACIQI members); see also *id.* p. 274 (NACIQI member noting "the way that the day has gone has been that more of the time has been spent listening to the defense of the Agency and those that have come to testify accordingly").

²⁸ For example, applying decades of accreditation experience, Department staff members expressed opinions that no agency could implement the standards ACICS intended to implement within the 12 month timeframe required for its compliance report, and they placed particular weight on ACICS's past track record. See, e.g., *id.*, pp. 16, 31, 46, 59-60, 266; see also *id.*, p. 255 ("We found significant areas of concern that we don't believe can be turned around in a 12 month period. We have heard before from this Agency that they would turn things around and they did not make good on their commitments. We don't have confidence at this point that they will make good on this commitment."). Similarly, the majority of NACIQI members expressed views that the efforts to make progress by ACICS were insufficient. See, e.g., *id.* p. 289 (NACIQI member reflecting on ACICS's assertions of progress and noting that "even when they were talking about all of these new advisory committees and sustaining the work that they were already doing the evidence just wasn't there").

²⁹ *Id.*, p. 292.

³⁰ Decision Letter, p. 3.

compliance.³¹ Second, ACICS argues that the underlying recognition process contained “procedural irregularities and inherent unfairness,” resulting in “an arbitrary and capricious SDO Decision.”³² Finally, ACICS claims that the Decision Letter “will have irreparable and harmful ripple effects on students currently enrolled at accredited institutions,” and thus that the Department should continue ACICS’s recognition for the sake of these students.³³ ACICS also requests an additional hearing.

After a careful review of the entirety of the record and the arguments of both sides on appeal, I find ACICS’s arguments unpersuasive. As detailed below, I not only find that ACICS is currently out of compliance with the full criteria required for recognition, but I cannot conclude that ACICS is capable of coming into full compliance within 12 months or less. I therefore find no basis on which to exercise my discretion to grant an extension of recognition for ACICS to come into and demonstrate compliance, and no basis on which to grant the request for a hearing.

A. Sufficiency of the Evidence Supporting the Decision Letter

I must first consider the recommendations of Department staff and NACIQI to make a final decision *de novo* on ACICS’s petition. While the SDO has already made such a decision, ACICS argues that the SDO did not consider all available, relevant information. ACICS claims the evidence demonstrates its ability to comply with all of the recognition criteria within 12 months.³⁴

ACICS argues that the record and new evidence reflect that it has already achieved compliance “with more than half” of the factors with which it was found noncompliant and that it can achieve compliance with all factors within 12 months.³⁵ Specifically, ACICS claims its policies enacted on July 1, 2016, brought it into compliance with five recognition criteria.³⁶ ACICS also argues that as a result of actions already taken it is, or will be within 12 months, in compliance with and able to demonstrate effective implementation of six additional criteria.³⁷ ACICS does not attempt to argue that it is in compliance with the ten remaining criteria, but instead claims that it is in the process of establishing policies and procedures that will eventually

³¹ ACICS Brief, p. 3.

³² *Id.*, pp. 1–2.

³³ *Id.*, pp. 2–3.

³⁴ *Id.*, p. 7.

³⁵ *Id.*, p. 9.

³⁶ *Id.*, pp. 9–12, citing Administrative and Fiscal Capacity (34 C.F.R. § 602.15(a)(1)); Public Members (34 C.F.R. § 602.15(a)(5)); Conflicts of Interest (34 C.F.R. § 602.15(a)(6)); Substantive Change Requests (34 C.F.R. § 602.22(a)(3)); Teach-Out Plans (34 C.F.R. § 602.24(c)(1)).

³⁷ ACICS Brief, pp. 12–16, citing Fiscal and Administrative Capacity – At Risk Institutions (34 C.F.R. § 602.16(a)(1)(v)); Misrepresentation (34 C.F.R. § 602.16(a)(1)(vii)); Student Complaints (34 C.F.R. § 602.16(a)(1)(ix)); Achievement of Stated Objectives (34 C.F.R. § 602.17(a)); Reasonable Basis for Accuracy of Information (34 C.F.R. § 602.18(d)); Out of Cycle Review (34 C.F.R. § 602.21).

enable it to not only achieve compliance with, but demonstrate effective implementation of, those ten remaining criteria within 12 months.³⁸

Department staff assembled a detailed and compelling report on which both the Department's and NACIQI's recommendations are based. While that report highlights 21 separate violations of the recognition criteria, I will not delve into every violation here. Rather, I will review in some detail below only a non-exhaustive selection of violations that demonstrate the profound and systemic failure of ACICS to effectively meet the basic Title IV responsibilities of a nationally recognized accrediting agency.³⁹

Standards and Application of Standards. First, I consider 34 C.F.R. §§ 602.16(a) and 602.17. These regulations require the agency to demonstrate that it has and can effectively apply and evaluate an institution's compliance with rigorous standards for accreditation in areas including: student achievement; fiscal and administrative capacity; recruiting and admissions practices, publications, grading, and advertising; records of student complaints against institutions; and compliance with Title IV responsibilities.⁴⁰ With regard to student achievement, Department staff found that not only was this one of the most significant areas of deficiency identified, but despite ACICS's assertions of progress in other areas, its progress in developing and effectively implementing student achievement standards was entirely lacking or incoherent.⁴¹ Department staff noted that the ACICS standards and processes in this area were unclear, and that in the past ACICS had "failed to document multiple reviews of different institutions demonstrating implementation of the student achievement standards."⁴² Moreover, the SDO observed that, despite notice of deficiencies in this area, in these proceedings ACICS has not put forward a plan to effectively develop and apply standards for evaluating student achievement.⁴³ Indeed, the Department notes that the student achievement standards appeared to change at each stage of the proceeding, and that in its newest Accreditation Criteria established July 1, 2016, ACICS has enacted a scheme for evaluating student achievement that replaced the element "graduation rates" with "level of graduate satisfaction." The Department notes that this new standard is "inherently incomprehensible" as a way to measure student achievement, however, because it will by definition only measure information from those students who

³⁸ ACICS Brief, pp. 16–27; *see id.*, p. 16 (noting that for these ten criteria "ACICS has been acting pursuant to a timeline to establish new policies and procedures and demonstrate effective implementation of those new policies within twelve months").

³⁹ Notably, several of these criteria are ones with which ACICS does not dispute its failure to currently comply. *See id.*, p. 16. These particular areas were also ones which NACIQI members spent considerable time discussing. *See generally* NACIQI Transcript; *see also id.*, p. 13 (NACIQI primary ACICS reviewer commenting "[t]o me going through the staff analysis the nub of the matter seems to be around 602.16 Rigor of the Standards 602.18 Enforcement of the Monitoring and 20 -- Enforcement of the Standards").

⁴⁰ Staff Report, pp. 11–19 (citing 34 C.F.R. §§ 602.16(a) and 602.17). While I focus on ACICS's failure on student achievement, as discussed further below I also note that Department staff found multiple failures by ACICS to uphold its Title IV responsibilities, such as in the case of ACICS's renewal of Michigan Jewish Institute's accreditation despite previously finding "unmistakable evidence" of fraud and unlawful appropriation of millions of dollars of federal student aid funds. *See* SDO Brief, pp. 19–21. ACICS also failed to ensure academic quality in institutions and to sufficiently address issues raised by state attorneys general and third party complaints. Staff Report, pp. 13, 15–16, 20–24.

⁴¹ SDO Brief, pp. 16–19.

⁴² Staff Report, pp. 12–13.

⁴³ *Id.*, pp. 12–13; SDO Brief, pp. 17–19, *see also id.*, n.5.

complete the program, and thus would ignore student achievement information from those students who do not complete the program.⁴⁴ ACICS also appears to lack a standard for licensure, but claims that it will develop and effectively implement one by April 2017.⁴⁵ The record thus reflects not only a failure to effectively apply these standards in the past, but lack of sufficient progress in developing and effectively implementing a set of standards that could meet the recognition criteria at some point in the future, much less within 12 months.

Monitoring. Next, I consider 34 C.F.R. § 602.19(b). This regulation requires the agency to demonstrate that it has an effective set of monitoring and evaluation approaches supported by data collection and analysis that enable the agency to identify and report problems with institutions' continued compliance.⁴⁶ ACICS claimed to have a system in place to comply with this requirement.⁴⁷ However, citing multiple substantial settlements agreed to by ACICS-accredited institutions and actions by state attorneys general, Department staff and NACIQI found ACICS's monitoring regime "insufficient to deter widespread misconduct regarding placement, recruiting and admissions."⁴⁸ Department staff further found it unlikely ACICS could demonstrate compliance with this requirement in the 12 months it would be allotted to file a compliance report, citing ACICS's "weak record in monitoring and failure to document enforcement."⁴⁹

Enforcement. Next, I consider 34 C.F.R. § 602.20. This regulation requires the agency to demonstrate it immediately initiates an adverse action against an institution when it is not in compliance with the agency's standards, and requires the institution to come into compliance within a prescribed time period or face immediate adverse action.⁵⁰ In multiple instances, the Department and NACIQI could not find evidence that ACICS took the required action against institutions even when faced with reliable information about violations of its standards from sources including state and federal agencies.⁵¹ Indeed, ACICS's past policy and practice allowed the accrediting of noncompliant institutions.⁵² ACICS asserted that it was in the process of revising its policies to come into compliance. However, Department staff found that even ACICS's revised policies contained "ambiguities and inconsistencies"⁵³ and that ACICS had not made sufficient progress to enable it to demonstrate effective implementation of the policies within 12 months.⁵⁴

⁴⁴ SDO Brief, pp. 16–17.

⁴⁵ *Id.*, p. 17; Staff Report, pp. 11–12.

⁴⁶ Staff Report, p. 20 (citing 34 C.F.R. § 602.19(b)).

⁴⁷ *Id.*, pp. 20–21.

⁴⁸ *Id.*, pp. 21–22; *see also* NACIQI Transcript p. 30 (member noting "application of standards to the point that was rigorous enough to begin monitoring these institutions was a complete failure").

⁴⁹ Staff Report, p. 22.

⁵⁰ *Id.*, pp. 22, 24 (citing 34 C.F.R. § 602.20).

⁵¹ *Id.*, pp. 22–25. The Department cites and discusses at some length ACICS's failure to act sufficiently in response to fraud and other violations at ACICS accredited institutions such as Corinthian's Everest schools, Michigan Jewish Institute, and ITT. *Id.*; *see also* SDO Brief, pp. 12–14, 19–22.

⁵² *See, e.g.*, SDO Brief, pp. 12–16; *see also* NACIQI Transcript, p. 13 (member noting that "oversight agencies acted against ACICS accredited institutions for falsified or low-placement rates" at least three times after ACICS, with "irrefutable evidence" in hand, left the institutions' accreditations intact).

⁵³ Staff Report, p. 23; SDO Brief, pp. 12–16.

⁵⁴ Staff Report, pp. 23–25; SDO Brief, pp. 15–16.

Review of Standards. Finally, I consider 34 C.F.R. § 602.21. This regulation requires the agency to maintain a systematic program of review that, through regular intervals and comprehensive analysis, demonstrates its standards are adequate to evaluate the education provided by institutions.⁵⁵ In light of ACICS's numerous violations of the criteria, Department staff found that ACICS's program of review did not have an effective mechanism for ensuring the adequacy of its standards outside of its regular recognition cycle.⁵⁶ As a result, ACICS could not and did not adapt its standards to adequately respond to the violations and failures of its systematic program for evaluating the quality of the institutions and programs it accredits.⁵⁷

These findings of noncompliance, like the rest of the findings in the Staff Report, are well-documented; ACICS has not significantly refuted the Department staff's findings. Therefore, I find no basis to grant ACICS full recognition.

Now I turn to ACICS's request for a temporary renewal of recognition so it can demonstrate compliance within 12 months. Such a temporary renewal is not an agency's right, but is an option available to the Secretary at his or her discretion when warranted by the circumstances.⁵⁸

As outlined above, ACICS has exhibited a profound lack of compliance with the most basic Title IV responsibilities of a nationally recognized accreditor. The failure by ACICS to develop and effectively implement a comprehensive scheme necessary to establish, apply, effectively monitor, and enforce the required standards, and its lack of progress toward effectively doing so, strongly indicates that ACICS cannot meet its ambitious promises to come into compliance within 12 months. Despite its well-documented and ongoing violations, and while not attempting to categorically refute the Department's finding that it is not fully compliant with the requirements for recognition, ACICS asserts that its current progress in addressing the violations suggests that it is capable of coming into compliance within 12 months. ACICS first highlights that it has undertaken major changes in leadership which it claims addresses NACIQI's concerns about the agency's ability to meet its responsibilities.⁵⁹ Additionally, ACICS indicates that it has enacted and/or plans to enact, and then plans to effectively apply, the new accrediting standards and review procedures that it needs to come into compliance, and it attempts to introduce new evidence to demonstrate that it has taken immediate adverse actions against certain institutions such as DuBois Business College.⁶⁰

I recognize, however, that the SDO, Department staff, and NACIQI already considered ACICS's assertions of progress. While acknowledging the ACICS leadership changes, Department staff nonetheless indicated a lack of confidence that ACICS can or will come into compliance during a 12 month extension.⁶¹ Similarly, despite ACICS's move toward new

⁵⁵ Staff Report, p. 25 (citing 34 C.F.R. § 602.21).

⁵⁶ *Id.*, pp. 25–26.

⁵⁷ *Id.*

⁵⁸ See 34 C.F.R. § 602.36(e)(3)(i).

⁵⁹ ACICS Brief, pp. 27–28.

⁶⁰ *Id.*, pp. 28–30; see also ACICS Reply Brief.

⁶¹ SDO Brief, pp. 23–25.

leadership, NACIQI was not persuaded to recommend a temporary renewal.⁶² Regarding enactment of new policies, the SDO raised concerns that ACICS had not yet made all needed improvements to its policies (or that some new policy changes are insufficient to address the identified deficiencies) or demonstrated an ability to effectively apply the new and revised policies.⁶³ For instance, in attempting to address its deficiencies related to student achievement standards, ACICS removed graduation rates as a measure, which, as discussed above, fails to address the violation.⁶⁴ ACICS also appears to have no standard regarding licensure, which is required for recognition.⁶⁵ Further, the comprehensive and systemic failure of ACICS's monitoring and enforcement scheme weighs heavily against granting a 12 month renewal. I am also unpersuaded by the new evidence submitted by ACICS in this appeal.⁶⁶

The lack of evident progress in addressing the violations is particularly problematic in light of what the record reveals with respect to ACICS's track record. ACICS's past failures are well documented and were discussed at length by the Department staff in its analysis and by NACIQI members at the meeting.⁶⁷ For example, ACICS renewed the accreditation of Michigan Jewish Institute despite previously finding "unmistakable evidence" of fraud and unlawful appropriation of millions of dollars of federal student aid funds.⁶⁸ In another instance ACICS admitted it at no time uncovered anything warranting enforcement in the matter of Everest Colleges, a Corinthian Colleges, Inc. institution.⁶⁹ In that case, ACICS failed to take action despite a warning from the Wisconsin Educational Approval Board that a five-month long investigation uncovered alarming dropout and placement rates, findings that prompted the State of Wisconsin itself to take action against the institution.⁷⁰ In another example, in 2013 ACICS committed to implement new data verification procedures to address serious failures to meet recognition criteria during the last recognition cycle.⁷¹ Yet rather than timely implementing the

⁶² For example, one NACIQI member expressed doubt as to whether ACICS, even with a "fresh team of people" had the "talent and capability and . . . culture" to achieve compliance in the face of the challenges accumulated over a number of "disastrous . . . years and failures of schools." NACIQI Transcript, p. 253.

⁶³ Department staff opined that ACICS could not meet the requirements of 34 C.F.R. § 602.19(b) in fewer than 18 months to two years because the Department would have to see both a period of monitoring and subsequent due process for the monitored institutions. NACIQI Transcript, pp. 258–59.

⁶⁴ SDO Brief, pp. 16–17.

⁶⁵ Staff Report, pp. 11–12; SDO Brief, pp. 28–29 (citing 34 C.F.R. § 602.16(a)(1)(i)).

⁶⁶ ACICS is barred from submitting additional evidence during the appeal to the Secretary. 34 C.F.R. § 602.37(c). Nevertheless, ACICS has submitted evidence regarding its change of leadership and recent enforcement actions, a departmental guidance letter and a letter from the Council For Higher Education Accreditation Committee on Recognition recommending ACICS for recognition by that body. ACICS Brief, Ex. A, B; ACICS Reply Brief, Exs. A, B. Having reviewed these submissions, I conclude that even if this additional evidence were admissible, and, *arguendo*, accepted as true, nothing ACICS submitted overcomes the pervasive compliance problems that are reflected in the existing record and recommendations of Department staff and NACIQI. Further, despite ACICS's ongoing efforts, there is nothing in the additional evidence, even if it were admissible, that would lead me to conclude that it will come into compliance within the 12 month period provided by regulation.

⁶⁷ *See, e.g.*, NACIQI Transcript, pp. 65–66. Typical of concerns expressed by a majority of NACIQI members at the meeting, one member noted that "track record in my mind is still the best predictor of future performance" and expressed the view that the failures at ACICS were so widespread and systemic that they could not come into compliance within 12 months. *Id.*

⁶⁸ Staff Report, pp. 16–17; *see* SDO Brief, pp. 19–21.

⁶⁹ Staff Report, pp. 12–13, 21–22; SDO Brief, p. 15.

⁷⁰ SDO Brief, pp. 14–15.

⁷¹ *Id.*, p. 30.

new verification procedures as promised in order to obtain renewal of its recognition, ACICS spent “two years to conduct a study” and only began efforts to improve data quality when it again began seeking renewal of its recognition in 2016.⁷² In the context of these examples of failures and others, the profound problems with ACICS’s accreditation scheme outlined above, and the lack of progress in addressing those problems in crucial areas, I cannot conclude that ACICS would be able to both revise (or, in some instances, enact) policies and demonstrate its effective implementation of those policies within 12 months as required to come into compliance.

Based on the extensive record, I reach the same conclusion as the SDO: the recommendations from the Department staff and NACIQI are well-founded. Both ACICS’s insufficient progress in addressing its areas of noncompliance and past track record weigh against granting a renewal of recognition for 12 months. Rather, I find that ACICS’s petition for renewal should be denied and that the Department should withdraw its recognition.

B. Fairness in the Recognition Process

I next turn to ACICS’s several arguments with regard to the fairness of the recognition process.

First, ACICS asserts that it “repeatedly . . . presented evidence of its ongoing compliance efforts and its capacity to achieve compliance going forward within 12 months.”⁷³ However, according to ACICS, the Department staff report ignored these presentations in violation of the regulatory duty to consider them.⁷⁴

The record reflects that both the Department staff and the SDO properly considered all information provided, including the evidence offered by ACICS which it argued demonstrated progress toward achieving compliance. As discussed above, Department staff at the NACIQI meeting expressly acknowledged ACICS’s reform efforts, but offered their expert opinions that they did not believe ACICS could achieve compliance within 12 months. NACIQI committee members, after considering presentations by Department staff, the agency, and third parties, agreed with the Department staff’s assessment. Similarly, the SDO’s Decision Letter also reflects that the SDO considered all of the underlying evidence alongside the recommendations from Department staff and NACIQI in making her decision. Therefore, I find that the SDO’s decision was well-supported by the evidence in the record and extensive expert analysis.

Second, ACICS argues that the NACIQI “recommendation is not supported by the facts”⁷⁵ and points in part to selected quotes by NACIQI members that appeared to suggest support of ACICS’s recognition.⁷⁶ A NACIQI meeting is intended to provide an opportunity for an institution, Department staff, and third parties to present evidence, expert opinions and public comments. Likewise, by design NACIQI members bring a variety of viewpoints and questions

⁷² SDO Brief, pp. 30–31.

⁷³ ACICS Brief, p. 31.

⁷⁴ *Id.* (citing 34 C.F.R. § 602.32(b)).

⁷⁵ *Id.*, p. 34.

⁷⁶ *Id.*, pp. 34–35.

to the committee meetings. Here, as discussed above, after weighing all of the evidence and expert testimony NACIQI voted 10-3 to adopt the Department staff recommendation to terminate ACICS's recognition and deny its request for renewal. Any individual statements by NACIQI members prior to the vote do not indicate that the votes by the majority of the members were not based on their expert assessment of the facts. Moreover, as discussed at length in this opinion, the available facts supported the recommendations by the Department staff and NACIQI, as well as the SDO's decision.

Third, ACICS claims that the Decision Letter is too short and conclusory to satisfy the SDO's regulatory obligation to "[specify] the reasons for this decision."⁷⁷ ACICS argues that the SDO did not sufficiently cite evidence to support her conclusions, and that those conclusions therefore are arbitrary and capricious.⁷⁸ While the Decision Letter is concise, it adopts and incorporates the lengthy analysis and recommendation made by Department staff which exhaustively described the regulations with which ACICS was not in compliance, and which was also approved by NACIQI. Moreover, in this decision I have *de novo* taken into account all of the prior proceedings and available evidence, including ACICS's arguments on appeal. Therefore, I find that ACICS was given the full benefit of due process, and that the Department's decision in this matter is not conclusory, arbitrary or capricious.

Fourth, ACICS argues that neither the Decision Letter nor Department staff recommendations consider the facts alongside the regulatory criteria with sufficient specificity.⁷⁹ As discussed above, I find that the record reflects that both the Department and NACIQI have adequately considered the facts alongside the regulatory criteria. All of this analysis, combined with the analysis herein, constitutes fair and sufficient consideration of ACICS's petition for recognition. The SDO did not need to paraphrase dozens of pages from the Staff Report to adopt its analysis.

Fifth, ACICS argues that the Department and NACIQI changed their guidelines and standards "in the midst of ACICS's recognition cycle," depriving ACICS of fair notice of the standard by which its recognition would be judged, and inappropriately holding ACICS to a higher standard akin to that of a special prosecutor.⁸⁰ ACICS also argues that similarly situated agencies have not been held to the same standards imposed in this case.⁸¹

I have held in the past that accrediting agencies' recognition proceedings are distinct from one another. Each agency is judged on a case by case basis.⁸² The law requires, however, that each accrediting agency effectively apply, monitor, and enforce the required standards, and that the Secretary place priority on reviewing accrediting agencies with the most complaints

⁷⁷ *Id.*, p. 35 (citing 34 C.F.R. § 602.36(e)(2)(ii)).

⁷⁸ *Id.*, pp. 35–39.

⁷⁹ *Id.*, pp. 36–39.

⁸⁰ *Id.*, pp. 39–41; 44–47.

⁸¹ *Id.*, pp. 44–47.

⁸² *Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges*, Dkt. No. 14-10-O, U.S. Dep't of Educ. (Decision of the Secretary), p. 10.

against them, such as ACICS.⁸³ In this case, the recommendations fit the facts relevant to ACICS. I do not find any evidence that the Department staff changed the standards by which ACICS was judged, or held ACICS to an inappropriately higher standard. Rather, I agree with the SDO that instead of new standards, ACICS faced only the proper application of “rigor” during its review process to assess its compliance with the regulatory criteria, as required by law.⁸⁴ The findings of ACICS’s violations are squarely based on the language of the regulations and are properly founded.

Sixth, ACICS complains that “procedural irregularities” in the preparation of the Department staff report⁸⁵ and “the conduct of the NACIQI meeting”⁸⁶ tainted the validity of the Decision Letter. ACICS also complains that the SDO did not act with independence because she was Chief of Staff to the Secretary at the time of the decision, and that its recognition process “has been unfairly politicized.”⁸⁷

I find nothing in the record to suggest that ACICS was not given the full benefit of a fair and impartial hearing. Recognition is reviewed in a detail-oriented, multi-tiered process. ACICS has had the benefit of a review by career professionals from the Department, including an opportunity to respond to staff concerns prior to Department staff issuing a final recommendation. ACICS had the benefit of an open meeting with NACIQI and the opportunity to provide a response to Department staff’s recommendation and to directly respond to NACIQI members prior to the committee’s vote. ACICS then had an opportunity to provide comments on NACIQI’s recommendation to the SDO. Finally, ACICS has the benefit of an appeal to the Secretary for a *de novo* review of the entire record. The record reflects also that each tier of the review process was properly walled off from the previous tier with regard to this matter and made independent, impartial decisions.⁸⁸ For example, the SDO had no involvement in the

⁸³ *E.g.*, 34 C.F.R. §§ 602.17, 602.19, 602.20; SDO Brief, pp. 37–38 (citing 20 U.S.C. § 1099b(n)(2) (“The Secretary shall place a priority for review . . . on those agencies or associations which have been the subject of the most complaints or legal actions.”)). For example, Department staff noted before NACIQI that the Department was “deluged” with allegations and evidence of problems with ACICS. NACIQI Transcript, pp. 45–46; *see also* Staff Report, p. 4.

⁸⁴ SDO Brief, pp. 39–40 (citing HEA § 496(n)(1), (n)(3) (20 U.S.C. § 1099b(n)(1), (n)(3))).

⁸⁵ Specifically with regard to the Department staff report, ACICS points to a quote from the NACIQI transcript to assert that personnel not usually involved in the accreditation work provided advice to the Department staff. ACICS Brief, p. 41.

⁸⁶ Specifically with regard to the NACIQI meeting, ACICS points to remarks from Under Secretary Mitchell at the start of the meeting which “clearly informed NACIQI Panel members of the outcome that the Department wished the NACIQI Meeting to reach.” ACICS Brief, p. 42.

⁸⁷ ACICS Brief, pp. 44, 47–49.

⁸⁸ A member of NACIQI raised this issue by questioning whether the Secretary’s office involved itself with the Department staff’s recommendation. NACIQI Transcript, pp. 48–49. Department staff responded that both the SDO and Secretary “have been completely walled off from the discussion of [ACICS] and from the preparation of the staff report.” *Id.*, pp. 49–50. A member of NACIQI noted that the ACICS recognition matter had attracted outside attention, but recognized that the staff analysis was based on the Secretary’s criteria for recognition. *Id.*, p. 19. Another member of the Department staff stated the recommendation came from career accreditation staff; the staff considered information from other offices in the normal course of the recognition process, but did not interact with any individuals who were walled off. *Id.*, p. 50. Department staff also advised that they approached the recognition review with an “innocent until proven guilty” mentality. *Id.*, p. 51. Another NACIQI member noted that an “innocent until proven guilty” standard was higher than required for these proceedings, and praised the Department staff for being “so scrupulous, so ethical” during the process. *Id.*, p. 63.

Department staff or NACIQI recommendations, and the Secretary had no involvement in the SDO's decision-making process.⁸⁹ But neither the regulations nor the proper ethical walls erected in this case prevent Office of Postsecondary Education staff from appropriately receiving input and advice from staff in other offices in an accrediting agency recognition review. Indeed, these questions were raised, discussed, and dismissed by the majority of NACIQI members at the NACIQI meeting.⁹⁰ NACIQI's 10-3 vote in favor of the Department staff's recommendation is an implicit rejection of this asserted flaw in the process. For these reasons, I reject ACICS's argument that procedural irregularities or political pressure tainted the review process.

C. Additional Issues Raised by ACICS

Last, I turn to several additional issues raised by ACICS. First, ACICS argues that, regardless of its compliance with the regulatory criteria, the Department must renew its recognition because of the potential harm to an estimated 580,000 students enrolled at institutions accredited by ACICS.⁹¹ The interests of students are of foremost concern to me and this Department, but students' interests are best served by proper application of the recognition criteria. That is also required by law. While I note that NACIQI members discussed this issue with Department staff,⁹² I agree with the SDO that ACICS does not have standing to raise a request for equitable relief on behalf of students. The appeal before me is limited to the issue of whether ACICS is in compliance with, or capable of coming into compliance with, in 12 months or less, the recognition criteria. I find no basis to set aside those criteria or to ignore their application to ACICS.

ACICS has also in its reply brief requested to hold a hearing to present additional arguments and evidence. An additional hearing is not contemplated by the regulations in the already robust recognition process. ACICS has provided voluminous documentary evidence, testimony, and analysis to Department staff and NACIQI. Then, it provided comments to the SDO and again in the current appeal. The entire process has constituted a hearing allowing ACICS a meaningful opportunity to be heard, which satisfies ACICS's right to due process.⁹³ I find no basis to conclude that expanding the process with an ad hoc hearing would be productive at this juncture or provide any basis for me to change my conclusion. Therefore, I deny ACICS's request for a hearing.

IV. Conclusion

The record before me supports the recommendations of the Department staff and NACIQI and the Decision Letter of the SDO. ACICS has not provided any argument or

⁸⁹ See *id.*, pp. 48–51.

⁹⁰ See *id.*, pp. 48–51, 63.

⁹¹ ACICS Brief, pp. 49–50.

⁹² See, e.g., NACIQI Transcript, pp. 36–37; see also *id.*, pp. 38–39 (Department staff noted “Our position is that . . . not to terminate would in the long-term put students and taxpayers in harm's way and we carefully considered the impact of this decision on institutions as well as the students, especially students.”).

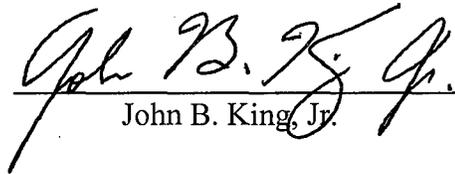
⁹³ See *Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges*, Dkt. No. 14-10-O, U.S. Dep't of Educ. (Decision of the Secretary), p. 12 (citing *Mathews v. Elridge*, 424 U.S. 319, 333 (1975)).

evidence that would compel me to reach a conclusion contrary to that arrived at by the SDO. Therefore, on the basis of the entire record before me, I find that ACICS is currently out of compliance with the full recognition criteria and not capable of coming into full compliance within 12 months or less. I therefore find no basis on which to exercise my discretion to grant an extension of recognition for ACICS to come into and demonstrate compliance.

ORDER

ACCORDINGLY, I hereby adopt the SDO Decision Letter and terminate the Department's recognition of ACICS as a nationally recognized accrediting agency.

So ordered this 12th day of December 2016.


John B. King, Jr.

Washington, D.C.

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