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*In the matter of*

**NATIONAL NURSE PRACTITIONER  
RESIDENCY & FELLOWSHIP  
TRAINING CONSORTIUM**

**Docket No. 21-04-AC**

Accreditor Recognition

Complainant.

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### **DECISION OF THE SECRETARY<sup>1</sup>**

The question presented in this case is whether an agency providing accreditation of post-graduate nurse practitioner programs is eligible for recognition as an agency with the principal purpose of allowing programs access to non-HEA federal grants under the Public Health Service Act (PHSA). In this case, the National Nurse Practitioner Residency & Fellowship Training Consortium (NNPRFTC) has appealed the January 14, 2021, decision (SDO Decision) issued by the Senior Department Official (SDO) regarding its application for initial recognition by the U.S. Department of Education (Department).<sup>2</sup> In the SDO Decision, SDO Diane Auer Jones determined NNPRFTC is not eligible for initial recognition.

In making a final decision for the Department, I review the record and arguments of the parties *de novo*.<sup>3</sup> After a careful review, I find that NNPRFTC satisfies the criteria for recognition. Therefore, I will reverse the SDO Decision and grant NNPRFTC initial recognition for a period of 5 years.

#### Legal Framework

The Department does not directly accredit institutions of higher education, but instead recognizes accrediting agencies. Agencies seeking initial or renewed recognition are evaluated by the Department's staff, reviewed by the National Advisory Committee on Institutional

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<sup>1</sup> Effective Sept. 28, 2021, Secretary of Education Miguel A. Cardona delegated his decision-making authority in this case, pursuant to 34 C.F.R. § 602.37, to Deputy Secretary Cindy Marten.

<sup>2</sup> A recognition decision issued by an SDO may be appealed to the Secretary of Education. 34 C.F.R. § 602.37(a). On Sept. 28, 2021, the Secretary delegated to me his authority to rule in this case. Pursuant to that authority, I hereby issue this recognition decision.

<sup>3</sup> 34 C.F.R. § 602.37(e) (“On appeal, the Secretary makes a recognition decision, as described in § 602.36(e).”); *Northwest Comm’n on Colleges and Univ.*, Dkt. No. 14-07-O, U.S. Dep’t of Educ. (Decision of the Secretary) (Dec. 11, 2014) at 5 (“I review Northwest’s appeal *de novo*”) and n.39 (“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*].”).

Quality and Integrity (NACIQI), and ultimately receive a recognition decision from an SDO within the Department. 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>4</sup> At each stage of the process, the agency is evaluated based on recognition criteria established at 34 C.F.R. Part 602 Subpart B.

The statute and regulations distinguish different types of agencies that qualify for recognition based on the agencies’ principal purposes. Relevant to this case, an agency recognized under 34 C.F.R. § 602.14(a)(2) (hereafter a “Section 602.14(a)(2) agency”) must have a voluntary membership and have as its principal purpose the accrediting of institutions or programs “to participate in non-HEA Federal programs.”<sup>5</sup> An agency that accredits higher education programs must also demonstrate a link to federal programs – specifically, that “its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.”<sup>6</sup> Finally, all accrediting agencies must also meet recognition criteria pertaining to administrative and fiscal responsibilities, operating policies and procedures, and accreditation standards, among others. The specific criterion at issue in this case is in 34 C.F.R. § 602.15(a)(6), which requires clear and effective controls against conflicts of interest or the appearance of conflicts of interest.

In the context of this legal framework, I now consider NNPRFTC’s petition for recognition.

### Background

NNPRFTC was incorporated in July of 2015 “with the primary focus of developing a formal accreditation process for programs of nurse practitioner residency and fellowship training in the United States.”<sup>7</sup> NNPRFTC seeks to facilitate a movement toward “residency training for all Advance Practice Registered Nurses.”<sup>8</sup> NNPRFTC’s mission statement, in part, expresses its intent to promote health and education by:

- (a) improving the availability, efficacy and quality of healthcare by establishing, developing and refining an educational and training model for post-graduate residency and fellowship training programs for nurse practitioners;
- (b) improving healthcare by promoting and providing support to post-graduate residency and fellowship training programs for nurse practitioners;
- (c) advancing and improving the availability, efficacy and quality of healthcare by establishing, implementing and monitoring standards for post-graduate residency and fellowship training programs for nurse practitioners by functioning as a

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<sup>4</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>5</sup> 34 C.F.R. § 602.14(a)(2).

<sup>6</sup> *Id.* § 602.10(b).

<sup>7</sup> NNPRFTC Brief at 3.

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

national accrediting agency with the principal purpose of accrediting post-graduate residency and fellowship training programs for nurse practitioners.<sup>9</sup>

NNPRFTC accredits “post-graduate training programs located within the United States that provide a minimum of 12 months of structured, intensive education and training in the service delivery setting that support the transition from academic preparation to clinical practice as a nurse practitioner in primary care or specialty areas.”<sup>10</sup> The programs are “sponsored by practice-based institutions that are accredited by one or more recognized United States healthcare quality assurance organizations.”<sup>11</sup>

NNPRFTC began seeking recognition by the Department in 2016 and submitted its petition for initial recognition in November 2019.<sup>12</sup> NNPRFTC seeks recognition as a Section 602.14(a)(2) agency “in order for NNPRFTC’s accredited programs to qualify for federal, non-HEA, grants administered by the [Department of Health and Human Services (DHHS)] Health Resources and Services Administration under the Public Health Service Act.”<sup>13</sup>

Initially, the Department’s staff assembled a list of follow up questions about the agency’s personnel, policies, enforcement actions, and other specifics, without which the Department expressed its intent to not recommend the agency’s recognition.<sup>14</sup> Subsequently, the Department’s staff assembled a 16-page analysis,<sup>15</sup> incorporating the information submitted by the agency at the Department’s request, and thereafter the Department’s staff recommended a 5-year grant of initial recognition.<sup>16</sup> In recommending this unreserved grant of recognition, the Department’s staff noted in the field “Issues or Problems” its finding of “None.”<sup>17</sup>

Of relevance to the instant case, the Department’s staff found NNPRFTC compliant with the criterion at § 602.10 – Link to Federal Programs. The Department’s staff found that NNPRFTC

has several federal links. First is the organizational sponsorship and training sites of 5 of the 7 currently accredited postgraduate nurse practitioner . . . training programs in Federally Qualified Health Centers (FQHCs). . . . In addition, NNPRFTC has identified three non-HEA Federal funding Programs which NNPRFTC will also use to demonstrate its federal link . . . . All three of these funding programs were created under the Public Health Service Act . . . and all three authorize the Secretary of HHS to award grants to eligible entities to support advanced education nurse training programs. In order to qualify for these grants,

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<sup>9</sup> *Id.* at 4 (citing NNPRFTC Mission Statement, <https://www.nppostgradtraining.com/About-Us/Mission> (last visited Sept. 7, 2021)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Ex. 5 (Draft Department’s Staff Report).

<sup>15</sup> *Id.*, Ex. 4 (Department’s Staff Draft Analysis).

<sup>16</sup> *Id.*, Ex. 6 (Department’s Staff Report).

<sup>17</sup> *Id.*

the [PHSA] requires recipient training programs to be accredited by an accreditor recognized by the Secretary of Education. 42 U.S.[C.] § 296(e).<sup>18</sup>

Thereafter, NACIQI considered NNPRFTC's petition at its February 27, 2020, meeting.<sup>19</sup> To begin with, the NACIQI reader noted that NNPRFTC came before the committee with "a very clean proposal."<sup>20</sup> The introduction of the agency was explicitly prefaced with the fact that NNPRFTC intended to accredit "post-graduate training programs following the completion of a master's degree in . . . nursing practice. So it's post-graduate and the participants must have had a master's degree and have passed their licensure."<sup>21</sup> A representative from the Department's staff noted that the agency had "zero complaints" from among its 18 third-party comments "that reflected positive opinions" of NNPRFTC. A member of NNPRFTC stated the agency was seeking recognition because "Federal recognition . . . is required for eligibility by programs for non-HEA federal funding."<sup>22</sup> NACIQI unanimously voted to recommend a 5-year period of initial recognition by a vote of 13-0.<sup>23</sup>

After receipt of the Final Staff Report and NACIQI's recommendation, the SDO issued a letter to NNPRFTC dated May 27, 2020.<sup>24</sup> In it, the SDO notified NNPRFTC that she found it noncompliant with recognition criteria and intended to deny the petition for recognition.<sup>25</sup> Thereafter, the SDO considered a response letter from NNPRFTC and a letter from counsel for the Department staff, both supporting the petition. The SDO then issued the SDO Decision denying the petition.

The SDO denied the petition on several bases. First, the SDO found that "an agency's accreditation must be a *required* element in enabling at least one entity to participate in a non-HEA federal funding program in order for the agency to be eligible to be recognized by the Secretary."<sup>26</sup> The SDO determined that NNPRFTC seeks to accredit "post-graduate residency program[s]," but only "degree or diploma-yielding program[s]" constitute "nursing education program[s] under PHSA regulations."<sup>27</sup> Because NNPRFTC does not seek to accredit degree or diploma-yielding programs that qualify for non-HEA federal funding under PHSA regulations, the SDO found that NNPRFTC does not qualify for recognition.

Alternatively, the SDO stated that "the organizations that provide these fellowships are not institutions of higher education, and do not issue recognized postsecondary credentials."<sup>28</sup> Because "[t]he Department's recognition is limited to institutions of higher education or programs offered by institutions of higher education . . . that lead to an academic or professional

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<sup>18</sup> Department's Staff Draft Analysis at 1.

<sup>19</sup> NNPRFTC Brief, Ex. 7 (NACIQI Report of the Meeting).

<sup>20</sup> NACIQI Transcript at unp. 1.

<sup>21</sup> *Id.* at 2.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> NACIQI Report of the Meeting at 6.

<sup>24</sup> May 27, 2020, Letter from SDO to NNPRFTC.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> SDO Decision (citing 34 C.F.R. § 602.10(b)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1-2.

degree, certificate or other recognized educational credential” the SDO found NNPRFTC “not eligible for recognition, regardless of the requirements of the PHSA.”<sup>29</sup>

The SDO also found NNPRFTC noncompliant with the criteria establishing an agency’s administrative and fiscal responsibilities, though that finding was rendered moot by her above-described conclusions. The SDO found “unusually close relationships” between leaders of NNPRFTC and Community Health Center, Inc. (CHC). These relationships, according to the SDO, created an appearance of a conflict of interest in violation of 34 C.F.R. § 602.15(a)(6).<sup>30</sup>

NNPRFTC has appealed the SDO Decision, arguing that the petition for recognition should be granted because the SDO Decision is based on erroneous factual and legal conclusions. I now turn to my legal analysis, applying the statutory and regulatory language to the petition for recognition.

### Analysis

The threshold issue in this case is whether, as a matter of law, any agency seeking to accredit post-graduate nurse practitioner fellowship and training programs can qualify for departmental recognition as a Section 602.14(a)(2) agency. If so, the next issue is whether NNPRFTC meets all criteria to support a favorable recognition decision. As described below, I find in the affirmative on both issues.

#### **An Agency Accrediting Post-Graduate Nurse Practitioner Fellowship and Training Programs is Eligible for Recognition Under Section 602.14(a)(2)**

The criteria at issue are the requirements at 34 C.F.R. §§ 602.10(b) and 602.14(a)(2)(ii). Under 34 C.F.R. § 602.10(b), an agency’s accreditation of higher education programs must be “a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.” Under 34 C.F.R. § 602.14(a)(2)(ii), an agency only qualifies for recognition if it “[h]as as its principal purpose the accrediting of higher education programs . . . and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.” Both the Department and NNPRFTC agree that NNPRFTC meets these criteria because its purpose is to accredit programs that require accreditation from a recognized agency to access non-HEA Federal funds authorized by the PHSA.

The programs seek funding from Advanced Education Nursing Grants (AEN Grants) authorized under 42 U.S.C. § 296j. They also seek Nurse Education, Practice, Quality and Retention Grants (NEPQR Grants) authorized under 42 U.S.C. § 296p. The Department’s staff expressly concur in NNPRFTC’s conclusion that “training programs conducted through funding offered under the AEN Grants and the NEPQR Grants require accreditation by an agency

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<sup>29</sup> *Id.*

<sup>30</sup> SDO Decision at 6.

recognized by the Department” and, therefore, NNPRFTC potentially qualifies as a Section 602.14(a)(2) agency.<sup>31</sup>

I agree with the analysis laid out by NNPRFTC and the Department’s staff, and disagree with the conclusions of the SDO. First, regarding AEN Grants, the statute authorizes the Secretary of HHS to award grants to eligible entities to support the enhancement of advanced nursing education and practice, including nurse practitioner programs offered to registered nurses.<sup>32</sup> To be eligible for an AEN Grant, a nurse practitioner program must, among other things, establish its objective as “the education of nurses” who will be qualified to provide primary health care in a variety of settings after completion of the program.<sup>33</sup> The statutory provision does not expressly require the nurse practitioner program receiving an AEN Grant to yield a degree.

NEPQR Grants may be awarded to, among other entities, “federally qualified health centers or nurse-managed health clinics.”<sup>34</sup> The extensive list of purposes for NEPQR Grants includes “developing and implementing internships, accredited fellowships, and accredited residency programs in collaboration with one or more accredited schools of nursing, to encourage the mentoring and development of specialties.”<sup>35</sup> The statute does not require the internships and fellowships to yield degrees to be eligible for such grants, but does require fellowships to be “accredited.”

Programs receiving AEN and NEPQR Grants must “meet applicable accreditation and quality standards.”<sup>36</sup> The statute further clarifies that a program is accredited when it is “accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education.”<sup>37</sup> Thus, the statute obligates the Department to recognize accreditors which accredit these programs or else no program will have access to the grants.

The SDO misreads 42 U.S.C. § 296(6)(A), saying “this requirement applies only to programs of nursing education provided by hospitals, schools, colleges, and universities . . . that issue one or more recognized postsecondary credentials.”<sup>38</sup> A careful reading of the statutory provision shows that it expressly provides for “any program of nurse education” *other than* those offered at the entities described by the SDO before providing for a “hospital, school, college, or university (or a unit thereof).”<sup>39</sup> Thus, as discussed above, the statute applies an accreditation requirement – from a recognized accrediting agency – for certain non-degree programs which are not offered at otherwise accredited institutions.

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<sup>31</sup> NNPRFTC also argued that other types of programs authorized under the PHSA require accreditation by a recognized agency. Department’s Staff Recommendation at 4. The Department’s staff did not agree, but that disagreement is irrelevant in light of my analysis regarding AEN and NEPQR Grants.

<sup>32</sup> The statute requires these programs to “meet guidelines prescribed by the Secretary.” 42 U.S.C. § 296j(c)(1). Notably, the prescribed regulations appear to be unpublished as of the date of this decision. 42 C.F.R. Part 57, Subpart Z – Grants for Advanced Nurse Education Programs–[Reserved].

<sup>33</sup> 42 U.S.C. § 296j(c)(2).

<sup>34</sup> *Id.* § 296p(f).

<sup>35</sup> *Id.* § 296p(c)(1)(C).

<sup>36</sup> *Id.* § 296e(c).

<sup>37</sup> *Id.* § 296(6)(A).

<sup>38</sup> SDO Decision at 2.

<sup>39</sup> 42 U.S.C. § 296(6)(A).

The SDO provides no support for the proposition that post-graduate nurse practitioner programs are not programs “that provide[] advanced nurse education” because they do not yield degrees.<sup>40</sup> The statute expressly requires nurse practitioner programs to provide for “education of nurses” but does not limit these programs to graduate degree programs. I find no authority to support the SDO’s narrow interpretation of the statute to exclude post-graduate nurse practitioner programs. In the absence of rules promulgated by the Secretary of HHS to narrow the scope of these grants, I find the programs accredited by NNPRFTC to fit squarely in the category of programs that require accreditation from a recognized accreditor to access PHSA funds.

With its principal purpose of accrediting programs for the purpose of accessing non-HEA funds, I find that NNPRFTC is a candidate for recognition as a Section 602.14(a)(2) agency.

### **NNPRFTC Meets the Criteria as a Section 602.14(a)(2) Accrediting Agency**

I now turn to NNPRFTC’s qualification for recognition as a Section 602.14(a)(2) agency. To be recognized under 20 U.S.C. § 1099b(a)(2)(A)(ii) and 34 C.F.R. § 602.14(a)(2), an agency must have a voluntary membership and have as its principal purpose the accrediting of institutions or programs “to participate in non-HEA Federal programs.”<sup>41</sup> The Department’s staff and NACIQI raised no concerns about whether NNPRFTC fit the basic requirements of a Section 602.14(a)(2) agency, nor did the SDO.

The remaining question is whether NNPRFTC satisfies each of the recognition criteria. In contrast to the Department’s staff and NACIQI, the SDO found that NNPRFTC failed to meet the requirement at 34 C.F.R. § 602.15(a)(6) that it have clear and effective controls against actual or apparent conflicts of interest.

In its final analysis, the Department’s staff found “[t]he NNPRFTC’s Accreditation Commission has clear and effective controls against conflicts of interest, or the appearance of conflicts of interest for all those directly involved with its accreditation activities.”<sup>42</sup> The Department’s staff cited with approval “the written conflict of interest policies and procedures” in “the Accreditation Policies and Procedures Manual.” The Department’s staff described the manual as having “an extensive policy against conflicts of interest and the appearance of conflicts of interest” which “applies to all members of the decision-making Accreditation Commission, site visitors, members of an appeals panel, members of the staff, and any agency officers, representatives and consultants.”<sup>43</sup> Even still, the Department required – and NNPRFTC provided – additional details regarding the hiring of its new Executive Director.<sup>44</sup> The Department noted that the new Executive Director, or another member of the Accreditation Commission, could someday have a conflict of interest with a nurse practitioner program that comes before NNPRFTC.<sup>45</sup> Although this scenario had not occurred, should it occur, the

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<sup>40</sup> SDO Decision at 3.

<sup>41</sup> 34 C.F.R. § 602.14(a)(2).

<sup>42</sup> Final Staff Analysis at unpag. 46.

<sup>43</sup> *Id.* at 47.

<sup>44</sup> *Id.* at 51.

<sup>45</sup> *Id.*

conflicted individual would have to be removed from the process of accreditation.<sup>46</sup> The Department's staff found NNPRFTC to be compliant with the recognition criteria.

The SDO, nevertheless, found NNPRFTC noncompliant. She pointed to NNPRFTC's relationship with CHC, which is both the parent organization of NNPRFTC and an accredited member.<sup>47</sup> CHC provides "[o]perational support" to NNPRFTC, including CHC staff in its departments of "Human Resources, Finance, Legal, Administration, Public Relations and Communications, [and] Information Technology."<sup>48</sup> Nevertheless, NNPRFTC makes accreditation decisions with "full independence and confidentiality" and none of these operational support staff "are members of any of the decision-making bodies" of NNPRFTC.<sup>49</sup> CHC also provides financial support to NNPRFTC under the terms of a memorandum of understanding (MOU) which states that CHC has no involvement with NNPRFTC's accreditation decisions.<sup>50</sup>

The SDO found the relationship between NNPRFTC and CHC to be "unusually close" and doubted that NNPRFTC "would take action against CHC's [nurse practitioner] program if, in the future, it failed to meet [NNPRFTC's] accreditation standards since, as was pointed out during NACIQI testimony, [NNPRFTC] would not be financially sustainable without CHC's support."<sup>51</sup> Accordingly, the SDO found insufficient controls against the appearance of conflicts of interest.<sup>52</sup>

NNPRFTC responds that it has established written protocols to ensure its independence. NNPRFTC is a separately incorporated entity that spells out its decision-making independence in an MOU with CHC.<sup>53</sup> NNPRFTC further addresses potential conflicts of interest in its bylaws, policies and procedures, and rules of governance.<sup>54</sup> These extensive written policy documents directly address the issue of whether NNPRFTC satisfies the recognition criterion requiring agencies to have clear and effective controls against conflicts of interest.

The SDO essentially ignored NNPRFTC's policies, basing her decision on this issue only on her conclusion that NNPRFTC had a *de facto* conflict with CHC which could not be mitigated by its written policies. The Department's staff disagrees, finding NNPRFTC compliant with all criteria, and NACIQI has unanimously recommended that NNPRFTC receive recognition.

I am persuaded by the well-reasoned recommendations of the Department's staff and NACIQI. Therefore, I grant recognition to NNPRFTC. Nevertheless, I am cognizant of the potential for the appearance of conflicts between NNPRFTC and CHC. I will exercise my authority to grant recognition with monitoring reports.<sup>55</sup> During its initial recognition period,

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<sup>46</sup> *Id.*

<sup>47</sup> Final Staff Analysis at unp. 27; SDO Decision at 6.

<sup>48</sup> Final Staff Analysis at unp. 27.

<sup>49</sup> *Id.*

<sup>50</sup> SDO Decision at 6.

<sup>51</sup> *Id.*

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

<sup>53</sup> NNPRFTC Brief at 20.

<sup>54</sup> *Id.*

<sup>55</sup> 34 C.F.R. § 602.36(e).

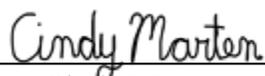
NNPRFTC will provide yearly monitoring reports to the Department's staff demonstrating how its policies and procedures have been effective in preventing or resolving "conflicts of interest, or the appearance of conflicts of interest."

Under NNPRFTC's rules, the Chair of the Accreditation Commission and the Executive Director are tasked with reviewing potential conflicts of interest.<sup>56</sup> Accordingly, the Chair of the Accreditation Commission and the Executive Director should implement sufficient protocols for identifying and addressing conflicts of interest or the appearance of conflicts of interest between NNPRFTC and its accredited programs, including CHC. These protocols should include, at a minimum, a self-evaluation focused on risk management and a policy for addressing external comments from any parties claiming that NNPRFTC's accreditation activities are conflicted. The monitoring reports should describe the protocols NNPRFTC is using and the success of those protocols in addressing any conflicts during the previous year. The reports should directly address any conflicts or appearance of conflicts arising from NNPRFTC accrediting its parent organization, CHC. The Department's staff should evaluate whether any circumstances are present that would compel a future limitation of NNPRFTC's scope of recognition to prohibit accrediting its parent organization.

### **ORDER**

For the foregoing reasons, the SDO Decision is **REVERSED**. I adopt the recommendation of the Department's staff finding NNPRFTC compliant with the recognition criteria, granting initial recognition for a period of 5 years. NNPRFTC must submit annual monitoring reports to the Department's staff as described above. NNPRFTC's first report will be due January 28, 2023, and every year thereafter for the duration of its initial recognition period.

So ordered this 28th day of January 2022.

  
Cindy Marten

Washington, DC

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<sup>56</sup> Accreditation Commission Rules of Governance and Integrity of Accreditation Activities, NNPRFTC (Apr. 11, 2019) (Petition Exhibit 111) at 5.

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