UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

July 22, 2019

The Honorable Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Scott:

Thank you for your letter of July 16, 2019 to Secretary DeVos. She has shared your letter with me, and I am pleased to respond on her behalf.

The Department of Education is committed to working cooperatively with Congress to accommodate your lawful oversight requests. Separation of powers, and the rule of law, constrain government power to protect America's citizens. Properly viewed, these are the essential objects of the Federal enterprise, not mere procedural impediments. Consequently, we take seriously our obligation to seek an optimal balance of Congress's oversight concerns and the Executive Branch's strong constitutional interests. *See generally Comm. on Oversight and Gov't Reform v. Lynch,* 156 F.Supp.3d 101, 110-12 (D.D.C. 2016); *United States v. Nixon,* 418 U.S. 683, 705-06, 708 (1974); *United States v. AT&T,* 567 F.2d 121, 127, 130 (D.C. Cir. 1977); *see also NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150–51 (1975); *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 448-50 (1977); *Congressional Requests for Confidential Executive Branch Information,* 13 Op. O.L.C. 153, 156-57 (June 19, 1989).

Our understanding is the Committee's oversight concerns are (1) the actions of Dream Center, (2) whether the Department properly exercised its regulatory authority, and (3) whether Department staff were "forthcoming" with Congress regarding the information it had on Dream Center. *See* Letter from the Hon. Robert "Bobby" Scott to the Hon. Betsy DeVos at 1, 2 (July 16, 2019) (Exhibit 1) (the "Committee Letter"). To address these concerns, the Committee has requested the production of all "emails and text records, internal and external" relating to seven different business concerns from nine Department officials. The Committee has also requested four transcribed interviews. *Id.* at 6.

To protect the public fisc and facilitate the timely resolution of this matter, the Department suggests a staged response – first, production of the requested emails and text records, and then such transcribed interviews as may be necessary and appropriate. This approach provides the most efficient and appropriate path forward. Department staff will reach out to your staff and begin discussions of a mutually acceptable accommodation process, including the timing of email and text record production.

At the same time, it does not appear that you have had an opportunity to receive and review materials contradicting the Committee staff's unfair suggestions that the Department tailored the Department's policy on retroactive accreditation to assist Dream Center and, accordingly, that its staff may have been less than entirely forthcoming before Congress. The Department categorically

rejects these allegations. As the attached documents demonstrate, the Department has engaged in policy deliberations about retroactive accreditation since at least 2008. Most recently, in 2016, Department staff and the Commission on Collegiate Nursing Education (CCNE) exchanged views on this issue. CCNE's application for continued recognition triggered Department staff to issue a memorandum on June 6, 2017, directing accreditation agencies to discontinue long-standing retroactive accreditation policies. These documents also show that the National Advisory Committee on Institutional Quality and Integrity (NACIQI) – at the urging of several accreditation agencies and institutions -- *rejected* the policy set forth in the June 6, 2017, memorandum, argued in favor of CCNE and accreditor use of retroactive accreditation policies, and recommended that the Senior Department Official (SDO) adjudicating the matter reject the staff recommendation against CCNE on this issue. This issue continued to percolate within the Department throughout 2017 as the SDO issued her decision rejecting NACIQI's recommendation, as CCNE filed a notice of appeal of the SDO's decision, and as CCNE briefed the issue on appeal. The Department was thus already reviewing and working to change the policy set forth in the June 6, 2017, memorandum when Acting Under Secretary Jones came to the Department in February 2018. After deliberating on the issues presented by retroactive accreditation, the Office of the Under Secretary adopted NACIQI's view and issued its policy decision on July 25, 2018.

The Department worked tirelessly with the accreditation agencies to ensure that students could complete their educational programs, preventing a repeat of the catastrophic Obama Administration Corinthian College collapse that spilled 30,000 students on the street. As one might expect, the Department's work-out activities included communications with Dream Center management. However, the documents demonstrate that Dream Center's management received no special treatment from the Department, and as it advised Congress, the decision to restore the *status quo* regarding retroactive accreditation had nothing to do with Dream Center.[1]

We understand the retroactive accreditation issue is particularly complex and that there were extensive administrative proceedings. Therefore, we appreciate this opportunity to address your questions and are happy to clarify any additional issues of concern that you or your staff may have. Please contact Jordan Harding, Principal Deputy Assistant Secretary delegated the duties of Assistant Secretary for Legislation and Congressional Affairs at (202) 401-0020, if you have additional questions.

Sincerely,

Reed D. Rubinstein
Acting General Counsel

[1]The Department notes Committee staff at once allege Dream Center executives mislead students and mismanaged institutions but also rely on emails from those very same executives to suggest the Department's review of the retroactive accreditation issue was somehow done for them and that the Department's representations to Congress were somehow questionable. *See* Committee Letter at 5-6 (citations omitted).