UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

October 26, 2020

Via email to bgdanley@hlcommission.org and U.S. Mail

Dr. Barbara Gellman-Danley
President
Higher Learning Commission
230 South LaSalle Street
Suite 7-500
Chicago, Illinois 60604

Re: Decision of the Senior Department Official in the Matter
of the Higher Learning Commission

Dear Dr. Gellman-Danley:

As the Senior Department Official ("SDO")[1] in the Higher Learning Commission ("HLC") accreditation matter, I write to inform you of my decision under 34 C.F.R. § 602.36. Under § 602.36(a), the SDO "makes a decision regarding recognition of an accrediting agency" ("agency") based upon the review of the record. The record includes materials provided to the National Advisory Committee on Institutional Quality and Integrity ("NACIQI") including a final Department of Education ("Department") staff analysis of HLC, the transcript of the NACIQI meeting of July 29-30, 2020 wherein HLC appeared, and other documents.[2]

In this case, the Department staff conducted a review of the compliance of HLC with the criteria for recognition of the agency under 34 C.F.R. § 602.33,[3] sometimes referred to as an "off-cycle review." Department staff initiated their review of HLC in October 2019. The review consisted of assessing whether HLC complied with certain criteria for recognition[4] based upon actions taken by HLC as set forth in a November 16, 2017 decision letter,[5] and actions thereafter, to a change of control application submitted by the Art Institute of Colorado and Illinois Institute of Art

[1] *See* 34 C.F.R. § 602.3 (definition of "[S]enior Department [O]fficial").
[2] 34 C.F.R. § 602.36(a); I acknowledge NACIQI voted to include in the record the report of the U.S. House Committee on Education and Labor titled "Shattered Dreams: Examining the Education Department's Role in the Misconduct of Dream Center Education Holdings," July 2020. The report is a part of the record.
[3] 34 C.F.R. § 602.33(a) ("Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—(1) At the request of the Advisory Committee; or (2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.").
[4] The key criteria for recognition at issue were 34 C.F.R. § 602.18 (consistency in decision-making) and 34 C.F.R. § 602.25 (due process).
[5] HLC refers to this letter as an "Action Letter."

("Institutes"). The November 16, 2017 letter resulted in the two accredited institutions being moved to candidacy status.[6]

The Department's staff review of HLC resulted in a final staff analysis that determined HLC was non-compliant with HLC's own policy (INST.E.50.010), 34 C.F.R. § 602.18(c)[7] ("consistency in decision making"), and 34 C.F.R. § 602.25(a),[8] (d),[9] (e),[10] and (f)[11] ("due process"). Department staff recommended to NACIQI that HLC's scope of recognition be limited. The limitation stated that HLC "may not accredit additional institutions of higher education that do not currently hold accreditation or preaccreditation status with the agency for the duration of the 12 month period pending a compliance determination by the Senior Department Official."[12]

The final staff analysis further recommended that HLC submit a compliance report to the SDO at the end of 12 months and include in it details of HLC's efforts to mitigate the negative effects of HLC's procedurally erroneous decision to withdraw accreditation from the Institutes, with particular regard to the status of academic credits and diplomas earned at the Institutes during calendar year 2018. NACIQI, however, by a vote of 9 to 2, with one abstention, recommended against so-limiting HLC's scope of recognition at its meeting on July 29, 2020.

In reaching my decision, I considered the full record, including HLC's letters, the final Department staff analysis and information Department staff relied upon in developing the analysis, all other materials supplied to NACIQI, the NACIQI transcript of its meeting of July 29-30, 2020,[13] NACIQI's recommendation, and the written statements submitted by both HLC and Department staff following the NACIQI meeting. Based upon the evidence presented, I find HLC was very unclear in describing the proposed "candidacy" status in its November 2017 letter. I further find that HLC failed to follow its own policies when it proposed this "candidacy" status. To be sure, as early as November and December 2017, and the first part of January 2018, Dream Center Education Holdings ("DCEH")/Institutes could have raised questions about the meaning of "candidacy" status prior to the closing of the transaction on January 19, 2018. There were shortcomings to go around. My role as the SDO is to review whether HLC complied with the recognition criteria in the higher education regulations. As set forth in greater detail below, I find

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[6] HLC uses the term "candidacy" status to describe "preaccreditation" status; *see* 34 C.F.R. § 602.3(a)(9) (referencing definition of "preaccreditation" in 34 C.F.R. Part 600). For Part 600, *see* 34 C.F.R. § 600.2 for definition of "preaccreditation" ("The status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time (sometimes referred to as "candidacy")).

[7] As of July 1, 2020, this provision is found at 34 C.F.R. § 602.18(b)(3).

[8] "Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited."

[9] "Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken."

[10] "Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action."

[11] "Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final."

[12] Letter from Annmarie Weisman of Dept. of Educ. to Dr. Barbara Gellman-Danley of HLC (June 30, 2020) at 12.

[13] This includes comments from members of the public at the NACIQI meeting and supplemental materials NACIQI moved to include in the record.

HLC noncompliant with 34 C.F.R. § 602.18(c) and 34 C.F.R. § 602.25(a) in 2017 and 2018. I find insufficient evidence of non-compliance by HLC with 34 C.F.R. § 602.25(d), (e), and (f).

HLC shall, therefore, submit periodic monitoring reports to the SDO for the next 12 months from the date of this decision. These reports shall be submitted no later than 20 days following the completion of each meeting or hearing of any HLC decision-making body, including, the HLC Board of Trustees ("Board"), Appeals Body, and the Institutional Actions Council[14] in which action is taken with regard to any HLC-affiliated institutions. HLC shall include a narrative summary of the Board, Appeals Body, and Institutional Actions Council decisions, the authority for such decisions, the reasoning for the decisions, related staff reports, and all other materials the decision-making body relied upon in the decision.[15] Such reports shall also include any other relevant information requested by the Department upon its review of each report. The reports shall further detail the specific efforts of HLC to mitigate the negative effects of HLC's decision (i.e., withdraw accreditation of the Institutes) upon former students, particularly regarding the status of academic credits earned during 2018.

However, I do not find HLC's non-compliance to warrant the limitation of recognition recommended by the Department's final staff analyses. During the 12-month reporting period, the scope of recognition remains as set forth in the May 9, 2018 letter to HLC.[16]

I have included below a brief statement of the background surrounding my decision, as well as the analysis in finding HLC noncompliant with 34 C.F.R. §§ 602.18(c) and 602.25(a).

BACKGROUND

The recitation of some of the key events surrounding the transactions that gave rise to the Department's review is instructive. In May 2017, two HLC-accredited institutions, the Art Institute of Colorado and the Illinois Institute of Art, submitted an "Application for Change of Control, Structure, or Organization" as provided by HLC policies INST.B.20.040 and INST.F.20.070. The proposed purchaser was Dream Center Educational Holdings ("DCEH"). HLC then reviewed the application and conducted a fact-finding visit to the Institutes. The

[14] "Meeting" includes any subcommittee meetings, whether in-person or virtual.

[15] Relevant actions for purposes of the reporting requirements include approving or denying a Change of Control, Structure, or Organization, and any appeal of an adverse action.

[16] The May 9, 2018 letter of Diane Jones to HLC refers to the most recent scope of recognition by the Secretary—

> [T]he accreditation and preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including the tribal institutions and the accreditation of programs offered via distance education and correspondence education within these institutions. This recognition extends to the Institutional Actions Council jointly with the Board of Trustees of the Commission for decisions on cases for continued accreditation or reaffirmation, and continued candidacy, and to the Appeals Body jointly with the Board of Trustees of the Commission for decisions related to initial candidacy or accreditation or reaffirmation of accreditation.

resulting summary report indicated that all the "Accreditation Criteria" were met or met with concerns.[17]

Following HLC's review of the application and submission of a summary report to DCEH and the Institutes, HLC sent a letter dated November 16, 2017 to the presidents of the Institutes and to the CEO of DCEH. The letter noted the HLC Board approved the change in ownership subject to the "requirement of Change of Control Candidacy Status." Though the letter described various duties that would be imposed under this requirement, the letter never expressly mentioned that "Change of Control Candidacy Status" would result in a forfeiture of the Institutes' full accreditation—a forfeiture which could negatively impact the value of any degrees or credits earned by the students, among other things. Neither did the letter mention that the Board's proposed course of action constituted an adverse action subject to appeal. Nor did the letter indicate under which HLC policy or policies HLC's action was taken.

Over the course of the next few weeks, DCEH, the Institutes, and HLC communicated with one another regarding the conditions for approval set forth in the November 16, 2017 letter. No written correspondence appears in the record indicating whether either party discussed the meaning of the "Change of Control Candidacy Status." DCEH and the Institutes formally accepted that status, unclear as it was, as a condition of the approval. The sale of the Institutes to DCEH closed on January 19, 2018.

HLC issued a Public Disclosure Notice ("PDN") on January 20, 2018. The PDN explained that the Institutes "transitioned to being . . . candidate[s] for accreditation after previously being accredited," and noted that "[d]uring candidacy status, an institution is not accredited." The PDN also advised that "students taking classes or graduating during the candidacy period should know that their courses or degrees are not accredited by HLC and may not be accepted in transfer to other colleges and universities or recognized by prospective employers."

After reviewing the PDN, counsel for DCEH sent a February 2, 2018 letter to HLC, expressing confusion over the Institutes' status as described in the PDN. At the end of that letter, DCEH counsel requested a copy of HLC's appeal policy and asked HLC to consider the letter a request for an appeal. On February 7, HLC responded to DCEH, stating "both institutions are eligible to seek accredited status following the requirements outlined in the November 16, 2017 Action Letter, as modified by the January 12, 2018 Action Letter, which confirmed again that approval of the extension of status was subject to a Change of Control Candidacy." HLC further noted "[t]he institutions are not in pre-candidacy status, as your [DCEH and Institutes] letter indicates" and nothing in the PDN changed or modified that "the institutions remain eligible to apply for accredited status based on the terms outlined in the November 16, 2017 Action Letter."

No mention was made in HLC's communication of February 7 of appellate rights or procedures. Counsel for DCEH and the Institutes wrote to HLC on February 23, 2018, requesting confirmation that: (1) the Institutes remained eligible for Title IV funds in "preaccreditation status"; (2) the Institutes remained accredited, in the status of Change of Control Candidate for Accreditation; (3) the Institutes will receive an objective review for continued accreditation; and (4) the Institutes

[17] Criteria for Accreditation are the standards of quality by which HLC determines whether an institution merits accreditation or reaffirmation of accreditation.

will communicate to students that they remain accredited in the capacity of Change of Control Candidate for Accreditation. Though HLC acknowledged receipt of this letter, it sent no response to DCEH. The absence of a response did not add clarity to an already unclear situation.

The next correspondence between the parties occurred on May 21, 2018. On that date, counsel for DCEH and the Institutes wrote HLC reminding it that they "had not yet received any guidance on how we can pursue our appeal with HLC." DCEH and the Institutes expressed concern about the impact of the uncertainty of accreditation upon students at the Institutes. HLC responded on May 30, 2018, permitting DCEH to file an appeal and describing the procedures for doing so. Ultimately, DCEH and the Institutes attempted to file an appeal, but sent its letter of appeal to an erroneous email address.[18] There is no evidence in the record HLC ever received the letter. During this same period and due to several events including financial hardship, the Institutes, as well as other DCEH-owned schools, began the process of closing. The result was that at the end of 2018, the Institutes closed, leaving students and graduates with credits and/or diplomas from schools that HLC determined to be unaccredited.

ANALYSIS

1. 34 C.F.R. § 602.18(c) requires an accreditor to "consistently apply and enforce [its] standards." An accreditor meets the requirement if it, among other things, "[b]ases decisions regarding accreditation and preaccreditation on the agency's published standards."[19]

The HLC policies at issue are those that guide its Board in determining whether to approve continued accreditation of an institution of higher education following a change in its ownership. *See* Policies INST.B.20.040 ("Change of Control, Structure, or Organization), INST.F.20.070 ("Processes for Seeking Approval of Change of Control"), and INST.E.50.010 ("Accredited to Candidate Status"). These three policies provide the HLC Board with several options for making determinations about a proposed change of ownership of an institution.

Under INST.B.20.040, "[a]n institution shall receive Commission approval prior to undergoing a transaction that affects, or may affect how control, [internal citation omitted] structure, or governance occurs at the accredited or candidate institution." In turn, the approval of such a transaction "shall be necessary prior to its consummation to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction." In other words, an institution will need to obtain approval by HLC of a transaction that changes the control, structure, or organization of the institution for its accreditation to continue after the transaction closes.

INST.F.20.070, which spells out the processes for seeking approval of a change of control, notes that the Board may: (1) "approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction"; (2) "deny approval for the change"; (3) "defer its consideration of the proposed [change] . . . to the next public Board meeting"; (4) "may approve

[18] Counsel for DCEH appears to have made a typographical error, sending the email enclosing the appellate brief to HLC officials with the incorrectly spelled domain name of "@hlcomission" rather than "@hlcommission." HLC never received the brief.

[19] The HLC policies are construed to be "standards" for purposes of the analysis in this decision.

the change subject to certain conditions. Such conditions may include, but are not limited to, limitations on new educational programs, student enrollment growth, development of new campuses or sites, etc."; or (5) may make use of "OTHER OPTIONS[20] identified in this section."

The "OTHER OPTIONS" section of INST.F.20.070 notes that, prior to approving a proposed change of control, the Board may require additional review to determine whether the transaction "constitutes the creation of a new institution such that it should be required to go through a period of time in candidacy or an initial status evaluation. . . . Any candidacy required by the Board under this section shall be known as a Change of Control Candidacy." This section of INST.F.20.070 is the only reference in the HLC policy manual that mentions the term "Change of Control Candidacy." Significantly, this section does not specify that Change of Control Candidacy means a loss of accreditation.

INST.E.50.010, titled "Accredited to Candidate Status," is the only other HLC policy that provides a means to move an institution from accredited to candidacy status following a change of control. It, similarly, is limited in scope. INST.E.50.010 applies when the Board finds that the institution, "as a result of or related to the [change] . . . meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices, but no longer meets all of the Criteria for Accreditation." This section also clarifies that moving an institution from accredited to candidacy status constitutes an adverse action, is not a final action, and thus is subject to appeal.[21] In the November 16, 2017 letter from HLC to DCEH/Institutes, there is no statement that the Institutes' candidacy status was an adverse action subject to an appeal.

Department staff contend HLC applied INST.E.50.010 in its interactions with DCEH/Institutes, not INST.F.20.070. When I consider the content of HLC's November 16, 2017 letter and the accrediting agency's apparent concern that the Institutes meet the Eligibility Requirements and Criteria for Accreditation, this section appears to be the most logical in terms of applicability. However, HLC strongly disagrees, noting that it applied INST.F.20.070 and that it made no determination that the Institutes "no longer meets [met] all of the Criteria for Accreditation," as would be required to trigger application of INST.E.50.010. I agree that no such determination was made.

Even if one defers to HLC that it applied INST.F.20.070, it did not follow the text of its policy. The mention of the term "Change of Control Candidacy" in HLC's November 16, 2017 decision letter would have necessitated the Board to have determined that the change in ownership resulted in the creation of a new institution. However, such language is absent from the decision letter. Factually, there was no new institution; the two Institutes continued to exist, but under different ownership.

HLC contends it approved the transaction "with conditions" under a separate provision of INST.F.20.070. One of the conditions was that the Institutes would be moved from accredited to candidacy status. This contention is untenable.

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[20] "OTHER OPTIONS" and "Other Board Options" appear to be used synonymously in INST.F.20.070.

[21] *See* INST.E.50.010, ¶ 1 ("Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.").

INST.F.20.070 clearly states "[i]f the Board votes to approve the change with or without conditions, *thereby authorizing accreditation for the institution subsequent to the close of the transaction*, the Commission will conduct a focused or other evaluation to the institution within six months of the consummation of the transaction." (emphasis added). An approval, even with conditions, authorizes continued accreditation after the transaction closes. Nowhere does the text of INST.F.20.070 state accreditation will be forfeited.

Further, conditioning accreditation is inconsistent with the other illustrations referenced in INST.F.20.070. The illustrations are of like kind (i.e., "limitations on new educational programs, student enrollment growth, development of new campuses or sites"). Forfeiture of accreditation bears no resemblance.[22]

For all the foregoing reasons, I find HLC failed to follow its standards, and is therefore noncompliant with 34 C.F.R. § 602.18(c).

2. 34 C.F.R. § 602.25(a) requires an accreditor to demonstrate that the procedures it uses satisfy due process. An accreditor meets the requirement if it, among other things, "[p]rovides adequate written specification of its requirements, *including clear standards*, for an institution or program to be accredited or preaccredited." (emphasis added).

Section 602.25(a) requires an accrediting agency to demonstrate the procedures it uses satisfy due process, and that the agency provides adequate written specifications of its requirements, including clear standards for accreditation. The question is whether HLC provided "adequate written specification of its requirements." I find it did not, and thus was noncompliant with 34 C.F.R. § 602.25(a).

Under these facts, HLC's decision letter of November 16, 2017 is the primary means by which HLC provided specifications of its requirements for accreditation, specifically through application of its policies INST.B.20.040, INST. F.20.070, and INST.E.50.010. First, I note the letter lacks clarity on the meaning of "Change of Control Candidacy." Notably absent is any reference to the HLC policy or policies that define "Change of Control Candidacy." Nowhere in the letter does HLC clearly state accreditation is forfeited as a condition of approval of the transaction. While it appears reasonable to impose candidacy status upon an institution if it no longer meets the basic requirements of accreditation, as INST.E.50.010 states, or under circumstances where a new institution is created, such was not the case with the Institutes.[23]

[22] It is odd that HLC would take great pains to set forth two circumstances (e.g., failure to meet all accreditation criteria and the creation of a new institution) under which candidacy status would apply, if indeed, the Board retained the discretion to attach candidacy status as a condition anytime it wishes. This interpretation would appear to render the "Other Board Options" section of INST.F.20.070, as well as the entirety of INST.E.50.010, superfluous.

[23] One of HLC's concerns was the financial stability of the Institutes. Yet, nowhere in the November 16, 2017 decision letter does HLC reference any concern over the potential loss of Title IV funding should DCEH/Institutes accept candidacy status as a condition precedent to closing the transaction. If financial stability were a concern for HLC, it is curious that it would propose an accreditation status that potentially makes matters more untenable.

Counsel for DCEH/Institutes also raised concerns about candidacy status and HLC's views of the Institutes' accreditation (i.e., no longer accredited). Counsel wrote at least two letters (February 2, 2018 and February 23, 2018) expressing confusion and surprise over the Institutes' accreditation status. Notably, one of the letters (February 23, 2018) went unanswered by HLC, though HLC did acknowledge receipt. In an interview with Department staff, the counsel for DCEH/Institutes, Ron Holt, stated he did not believe the approval of the sale of the Institutes required a forfeiture of accreditation. Holt explained if such were the case, DCEH would never have completed the transaction. HLC's Executive Vice President and then-counsel, Dr. Karen Solinski, also told the Department that she did not believe HLC acted to withdraw the accreditation of the Institutes. At the July 29, 2020 NACIQI meeting, Dr. Anthea Sweeney, HLC's Vice President for Legal and Governmental Affairs, admitted the "way that HLC's policy book is organized is not a framework that may be easily understood by those who are outside of our organization."[24]

In summarizing the testimony before NACIQI, Dr. Paul LeBlanc,[25] a member of NACIQI, noted:

> "We believe that HLC's policies regarding change of control, adverse action, and skills were not as clear or logical as they should have been.
>
> The offer of candidacy and the scattered consequence could have been outlined in a clear and more transparent fashion, no matter the responsibility of DCEH to know, understand, or seek clarification of its own.
>
> Compliance with its own policies has shown itself to be complicated, because HLC's policies are themselves complicated. The answer to HLC's own lack of clarity should not be, others provide the clarity, we do not."[26]

I find instructive Dr. LeBlanc's comments, the views of Department staff, counsel for DCEH/Institutes, and the acknowledgment by the Vice President for Legal and Governmental Affairs of HLC. The lack of clarity in HLC's November 16, 2017 decision letter and in its policies, and the confusion created thereby, render HLC noncompliant with the "adequate written specification[s]" and the "clear standards" requirements of 34 C.F.R. § 602.25(a).

3. 34 C.F.R. § 602.25(d) requires an accreditor to demonstrate that the procedures it uses satisfy due process. An accreditor meets the requirement if it, among other things, "[p]rovides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken."

As a preliminary matter, I note the words "[a]dverse accrediting action" and "adverse action" mean "the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution

[24] NACIQI transcript at 153.
[25] Dr. Paul LeBlanc is President of Southern New Hampshire University. He previously served as a Senior Policy Advisor to former Under Secretary Ted Mitchell at the U.S. Department of Education.
[26] NACIQI transcript at 323-324.

or program."[27] The Department staff contend HLC's decision constituted an adverse action, and HLC disputes that contention. Assuming for the sake of the Department's argument the HLC decision letter of November 16, 2017 to DCEH/Institutes constituted notice of an adverse action, and assuming the adverse action (i.e., the denial, withdraw, suspension, revocation, or termination) occurred at the time of the closing on January 19, 2018, I find insufficient evidence that HLC failed to provide sufficient opportunity to DCEH/Institutes to respond in writing to any deficiencies identified by HLC. Thus, I do not find HLC noncompliant with 34 C.F.R. § 625(d).[28]

HLC transmitted a staff report to the DCEH/Institutes on October 3, 2017 and a decision letter on November 16, 2017. The staff report and the decision letter gave the Institutes a "sufficient opportunity for a written response . . . regarding any deficiencies."[29] Indeed, the Institutes submitted a written response to the staff report and the letter on November 29, 2017 and again on January 4, 2018. Counsel for DCEH/Institutes also engaged in lengthy discussions with HLC throughout December 2017. Though "Change of Control Candidacy" may have been less than clear in the communications from HLC to DCEH/Institutes, the evidence does not show HLC failed to provide a sufficient opportunity for a written response to any deficiencies.

4. 34 C.F.R. § 602.25(e) requires an accreditor to demonstrate that the procedures it uses satisfy due process. An accreditor meets the requirement if it, among other things, "[n]otifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action."

The regulation requires an accrediting agency to give notice of an adverse action and a description of the basis for the action. The Department staff contend there was adverse action and HLC disputes that contention. As noted earlier and for the sake of argument, I will assume there was adverse action. I find the notice of adverse action (i.e., November 16, 2017 decision letter), the actual action (i.e., at the time of closing on January 19, 2018), and HLC's policies confusing and lacking in clarity. A much better approach would have been for HLC to clearly identify its decision letter as notice of an adverse action that would occur upon consummation of the transaction in January 2018. Similarly, explaining that "candidacy status" meant the forfeiture of accreditation would have provided clarity. However, the regulation does not require specific words to use in so communicating. Thus, I find insufficient evidence of noncompliance by HLC with § 602.25(e).

5. 34 C.F.R. § 602.25(f) requires an accreditor to demonstrate that the procedures it uses satisfy due process. An accreditor meets the requirement if it, among other things, "[p]rovides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final."

Finally, the Department staff argue that HLC's failure to give notice to the DCEH/Institutes of the right to appeal HLC's adverse action rendered HLC noncompliant with this regulation. Section 602.25(f) requires the accrediting agency to "[p]rovide[] an opportunity, *upon written request of*

[27] 34 C.F.R. § 602.3(b) (definition of "[a]dverse accrediting action" and "adverse action").
[28] Apart from how HLC viewed or otherwise labeled its decision letter, it was lacking in clarity, specifically with respect to the meaning of "Change of Control Candidacy."
[29] 34 C.F.R. § 602.25(d).

an institution . . . for the institution . . . to appeal any adverse action prior to the action becoming final." (emphasis added). Here again, assuming for the sake of argument there was adverse action, the regulation only requires HLC to provide an opportunity to appeal once DCEH/Institutes make a written request. At no point during November 2017 through the adverse action (i.e. forfeiture of accreditation at the closing of the transaction on January 19, 2018) did the DCEH/Institutes make a written request to appeal. I find insufficient evidence to find HLC noncompliant with 34 C.F.R. § 602.25(f).

CONCLUSION

I agree in part with the Department's staff analysis and recommendation. I concur with the Department's views that HLC's decision (and its communication of that decision) to condition approval of the change in ownership upon the Institutes' acceptance of forfeiture of accreditation was not compliant with 34 C.F.R. §§ 602.18(c) or 602.25(a). I further agree with the Department that HLC's decision adversely impacted many students.

I also have considered HLC's mitigation efforts. It reached out to impacted students by encouraging member institutions to accept transfer credits from the Institutes' former students, and it established a hotline for those students. It removed references in its policies to the two ways that a school might be required to be downgraded from accredited to candidate status.

I have concluded that limiting the scope of HLC's recognition for a 12-month period is not appropriate under the facts of this case. Nevertheless, I remain concerned about the way that HLC executed this past decision.

As I noted in the opening section of this decision, I have continued the Secretary's earlier recognition of HLC as an accrediting agency as set forth in the May 9, 2018 letter to HLC when it was last considered for re-recognition.[30] I further require HLC to submit periodic monitoring reports to the Senior Department Official over the next 12-month period from the date of this decision.

As previously stated, these reports shall be submitted following each meeting or hearing of any HLC decision-making body, including the HLC Board, Appeals Body, and Institutional Actions Council in which action is taken regarding any HLC-accredited institutions. Relevant actions for purposes of reporting include approving or denying a Change of Control, Structure, or Organization, and any appeal of an adverse action. The reports shall include a narrative summary of the Board, Appeals Body, and Institutional Actions Council decisions, the authority for such decisions, the reasoning for the decisions, related staff reports, and all other materials the decision-making body relied on in the decision. Such reports shall also include any other relevant information requested by the Department. These reports shall further detail the specific efforts of HLC to mitigate the negative effects of HLC's decision (i.e., withdraw accreditation from the Institutes) upon former students, particularly regarding the status of academic credits and degrees earned during 2018.

[30] *See* n. 16, *supra.*

Please work with Department staff to submit the monitoring reports using the Department's electronic submission system, which may be accessed at https://opeweb.ed.gov/. Material that cannot be submitted electronically may be forwarded in hard copy. Please submit four copies of any hard copy material to: Accreditation Group, United States Department of Education, 400 Maryland Avenue, Southwest, Suite 6W243, Washington, DC, 20202.

Sincerely,

Mitchell M. Zais

Mitchell M. Zais, Ph.D.
Senior Department Official and
Deputy Secretary of Education