



UNITED STATES DEPARTMENT OF EDUCATION

October 27, 2021

Michale S. McComis, Ed.D.
Executive Director
Accrediting Commission of Career Schools and Colleges
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Dear Dr. McComis:

I am writing to inform you of my determination with respect to the application for renewal of accreditation recognition of the Accrediting Commission of Career Schools and Colleges (ACCSC). U.S. Department of Education (Department) staff and the National Advisory Committee on Institutional Quality and Integrity (NACIQI) have each made a recommendation to me. These recommendations were made under section 114 and 496 of the Higher Education Act of 1965, as amended, and pursuant to relevant statutory and regulatory provisions.

The Department staff recommended that I continue ACCSC's recognition as a nationally recognized accrediting agency for five years; NACIQI recommended that I continue ACCSC's recognition for three years. ACCSC submitted responsive written comments under 34 C.F.R. §602.35 on August 10, 2021, in which it argued that NACIQI's recommendation should not be followed because the recommendation was: incomplete and not correlated to any recognized regulatory rationale; not based on the record; and lacked due process.¹ ACCSC asked that I renew the agency's recognition for the five year period recommended by Department staff.²

¹ Letter from Dr. McComis, ACCSC, to Deputy Under Secretary Matsudaira (Aug. 10, 2021).

² On October 1, 2021, I received a letter dated September 20, 2021, that was sent to Secretary Miguel Cardona by a coalition of advocacy groups. In this letter, the groups advocated for a maximum three-year renewal of ACCSC's recognition, citing discussions at the NACIQI meeting leading to the Committee's recommendation. The coalition also asked for the Department and NACIQI to make changes to their accreditation review processes, including using the negotiated rulemaking process and guidance. The coalition's letter was forwarded along with a letter from Department counsel identifying the procedural considerations accompanying whether and how to consider the coalition's letter as part of the present decision-making process. ACCSC responded on October 8, 2021, requesting that I not consider the letter as new information under 34 C.F.R. §602.36(h). I agree with ACCSC: the coalition's letter does not constitute new information that requires consideration under 34 C.F.R. §602.36(h). The information cited to is all found in the transcripts of the NACIQI meeting and elsewhere in the record properly compiled under 34 C.F.R. §602.36(a). In my opinion, the coalition letter constitutes advocacy by a third party that would have been appropriately submitted as part of the Department staff or NACIQI review and recommendation process. The regulations at 34 C.F.R. Part 602 do not contemplate a new opportunity for public comment at this stage in the

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Due to the emergence of information not previously considered in the record that is relevant to determining ACCSC's compliance with the Secretary's recognition criteria and that was not considered during the Department staff review, under 34 C.F.R. §602.36(h)(2), I am postponing making a recognition decision with respect to ACCSC until I receive written responses to said information from ACCSC and analysis of the information from Department staff under section 602.36(h)(2)(ii) and (iii).

Center for Excellence in Higher Education

On July 29, 2021, after NACIQI discussed ACCSC's petition for recognition, representatives from the Center for Excellence in Higher Education (CEHE), owners of the California College of San Diego, CollegeAmerica Phoenix, Independence University, and Stevens-Henager College, which were accredited by ACCSC, provided notice to the Department that the institutions would permanently close on August 1.³

I found this closure, announced on the last day of the July 2021 NACIQI meeting, as well as its timing, troubling. As a general matter, I am certainly aware that institutional closures are not necessarily evidence of noncompliance on the part of their accrediting agency. What I found troubling here, particularly after further background review, was the lack of evidence or analysis in the record of how the agency was addressing CEHE in a way that complies with their own accreditation standards.

In an effort to determine whether the CEHE closure raised any compliance flags, I examined the NACIQI transcripts and briefly reviewed some of the examples of concern mentioned by Committee members. One member raised concerns about enforcement timelines, citing a lawsuit brought by the Colorado Attorney General in 2014.⁴ I reviewed the August 2020 finding in the referenced case, *State of Colorado v. Center for Excellence in Higher Education, Inc.*⁵, in which the Colorado District Court found that CEHE defrauded students and violated Colorado's consumer protection laws, and held CEHE executives individually liable. Among the findings, and very relevant here, the court found that CEHE "did not accurately report their employment rates to the ACCSC or to students", which contributed to false claims made to students.⁶ In short, the court found that CEHE used a methodology in calculating employment rates that was inconsistent with ACCSC's standards, and reported employment data to ACCSC and students that was significantly more favorable than reality. The Colorado court found that where rates

decision. For that reason, and because it does not contain any new information relevant to the recognition decision before me now, I decline to consider the coalition letter in reaching my decision.

³ See, Department of Education, Office of Federal Student Aid, *Information for Students Affected by the Closure of Center for Excellence in Higher Education Schools*. <https://studentaid.gov/sites/default/files/cehe-closed-school.pdf>. ACCSC had moved to withdraw accreditation from Independence University in April 2021, and that decision was under appeal at the time of CEHE's announcement.

⁴ See, NACIQI Transcript, Meeting Day 1 (July 27, 2021), p. 71.

⁵ Findings of Fact, Conclusions of Law, and Judgment, *State of Colorado, ex. rel. v. Center for Excellence in Higher Education, et al.*, Case No. 14CV34530, Colorado District Court (Aug. 21, 2020).

⁶ *Id.*, Finding of Fact VII.

were misreported, CEHE lacked and failed to maintain sufficient documentation or information, graduates were employed in occupations not related to their field of study or in jobs that were not sustainable.⁷

ACCSC's April 2021 withdrawal decision with respect to Independence University raises additional questions about the enforcement timelines the agency has in place when it finds an institution out of compliance with its standards, as was noted in the NACIQI transcript. ACCSC noted that its "serious concerns with CEHE schools are longstanding"⁸, and that "from 2012 to the present, the [CEHE system of] schools have been subject to scrutiny by the Commission due to an inability to demonstrate continuous compliance with accrediting standards, particularly in the areas of acceptable student achievement, advertising and recruitment tactics, rigor of the admissions process, and employment classifications."

I pause here to reiterate that my role as the Senior Department Official (SDO) is not to monitor the actions of individual institutions. Rather, my role is, in part, to evaluate how accrediting agencies respond when the institutions they accredit fall out of compliance with, or take actions that are counter to, the agency's accreditation standards. The concerns that I express here are not with CEHE, per se, but rather with questions raised about ACCSC's response. I note that a still-brief, but more critical examination of just these documents raise serious concerns about (1) whether ACCSC has standards in place that are sufficiently rigorous, if institutions are submitting inaccurate data that has not been properly verified and reporting it publicly to consumers, (2) whether ACCSC has and effectively applies monitoring and evaluation approaches that enable the agency to identify issues with compliance with agency standards by an institution or program, and (3) whether ACCSC provides an institution or program that it has found out of compliance with a written timeline for coming into compliance that adheres to regulatory criteria.

CEHE's collapse is a red flag, and because the closure was announced long after the Department staff review process was completed, and at such a time that there was not an opportunity for NACIQI to discuss whether it was relevant to ACCSC's compliance with the Secretary's recognition criteria, and because the record does not reflect that ACCSC's response to CEHE's long-standing compliance issues or the lawsuit were addressed as part of the Department review, I find that this must be considered prior to a final accreditation decision under 34 C.F.R. §602.36.

Request for Consideration of Information Not Previously Addressed in the Record

As discussed above, the closure and timing of closure of CEHE caused me to look more closely at how the record examines how ACCSC responded to CEHE's near decade of noncompliance with the agency's accreditation standards. I find that the record does not contain critical examination by Department staff,

⁷ I note that the employment records examined by the Colorado court were from 2009-2012, and 2015, times which fall outside of the current period of recognition. However, given that the factual findings from the state court were not previously available for consideration, and given CEHE's recent closure, the records are relevant to set a baseline of comparison to review whether the agency's monitoring and enforcement measures have been meaningfully improved.

⁸ ACCSC letter to CEHE (Apr. 22, 2021), available at:

<https://www.accsc.org/UploadedDocuments/Commission%20Actions/2021/Public-Notices/Withdrawal/Website-Posting-Independence-University.pdf>.

and the agency has not been asked to respond to this information. Thus, pursuant to 34 C.F.R. §602.36(h)(2), I would like both ACCSC and Department staff to review and respond to: (1) the closure of CEHE's institutions, and whether ACCSC's actions followed enforcement timelines under 34 C.F.R. 602.20; (2) The April 2021 withdrawal of accreditation from Independence University, in particular with respect to ACCSC's adherence to its own written standards and federal regulations in monitoring and responding to the institution's long-term compliance issues; and (3) the Colorado District Court findings regarding CEHE's reported employment data, in particular with respect to whether ACCSC should have discovered CEHE's fraudulent practices under their own accreditation standards and monitoring protocols and what steps its taken to change its standards and policies in response. While I welcome a broad review of this information, I specifically request a response with respect to the following recognition criteria:

1. 34 C.F.R. §602.16(a)(1)(i) – Student Achievement.

Section 602.16(a)(1)(i) requires an agency to demonstrate that it has standards for accreditation and preaccreditation, if offered, that are *sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits*. The agency meets this requirement if, in part, the agency's accreditation standards effectively address the quality of the institution or program's success with respect to student achievement in relation to the institution's mission.

Appendix VII of ACCSC's Standards of Accreditation⁹ and ACCSC's *Blueprints for Success*¹⁰ point to guidelines for employment classification. I ask the agency to provide evidence of how ACCSC, through the use of site team visits, or other policies and procedures, evaluates student achievement metrics, and particularly the agency's evaluation of employment classification in accordance with ACCSC's standards to ensure consistency with the institution's or program's mission.

2. 34 C.F.R. §602.19(b) – Monitoring and Evaluation.

Section 602.19(b) requires an agency to demonstrate that it has, *and effectively applies*, monitoring and evaluation approaches that enable the agency to identify problems with an institution's or program's continued compliance with agency standards, and that take into account institutional or program strengths and stability.

As part of its application for renewed recognition, ACCSC provided copies of its written policies and procedures for how it independently monitors graduates listed as employed and engages with independent third parties to verify reported employment data.¹¹ ACCSC also provided an institution's self-evaluation and accompanying site visit report. Although the self-evaluation notes that the school must provide supporting backup documentation for each graduation and employment chart to the on-site evaluation team, the on-site evaluation report only notes that site visitors reviewed the results of third-party

⁹ The Accrediting Commission of Career Schools and Colleges, Standards of Accreditation, Appendix VII – Guidelines for Employment Classification (July 1, 2019), Exhibit 15, page 133 et seq.

¹⁰ The Accrediting Commission of Career Schools and Colleges, Blueprints for Success: ACCSC's Graduation and Employment Chart, Exhibit 15e.

¹¹ See, The Accrediting Commission of Career Schools and Colleges, Standards of Accreditation (July 1, 2019), Exhibit 15; Letter from ACCSC to B. Marth, All-State Career School (Nov. 13, 2019), Exhibit 19g; Letter from ACCSC to P. Hart, New York Automotive & Diesel Institute (June 5, 2019), Exhibit 19h.

verification of employment data.¹² ACCSC has provided sufficient evidence that it independently monitors graduates listed as employed, but there is not clear evidence that it monitors and evaluates whether those graduates should be listed as employed in a field they trained. This issue is reflective of the findings of the Colorado court, and hints at potential shortcomings in ACCSC's application of their own standards.

I ask that ACCSC provide evidence that it effectively applies monitoring and evaluation approaches that demonstrate not just whether employment rates are accurate, but whether graduates listed as employed should be counted as employed based on the agency's employment classifications. As a measure of student success, accurate employment classification is a key proxy for the broader economic success of the institution or program, and necessary to effectively monitor and evaluate whether an institution or program is successfully fulfilling its mission. In addition, ACCSC must demonstrate that it effectively applies monitoring and evaluation approaches to identify problems with employment classification and that these approaches are effective in identifying problems.

3. **34 C.F.R. §602.20(a) – Enforcement of Standards.**

Section 602.20 requires an agency to follow its written policies and timelines for enforcement when an institution or program it accredits is found out of compliance. The regulations ACCSC was evaluated against require that if an institution or program is not in compliance with any standard, the agency must-- "(1) Immediately initiate adverse action against the institution or program; or (2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed-- (I) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length; (ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or (iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length."¹³ Based on the agency's narrative and supporting exhibits, when ACCSC has significant concerns regarding a school's compliance with accrediting standards or determines that an institution or program is out of compliance with one or more of its standards, ACCSC may place the institution on probation, with a set timeline to resolve that noncompliance, and that failure to demonstrate compliance by the end of the warning period may result in withdrawal.¹⁴ The Department staff analysis notes that ACCSC's "policies and procedures for the enforcement of its standards meets the requirement because when the Commission decides to place an institution on warning and probation, it implements the enforcement timeline accordingly."¹⁵ However, ACCSC's narrative and exhibits only document the use of probation and do not demonstrate that the agency has used warnings or other available enforcement actions when it finds an institution or program out of compliance with its standards. The record also does not provide evidence that the agency adheres to a timeline when an institution or program is found out of compliance with a standard and is

¹² Gwinnet College SER, annual report, financial aid requirements, Exhibit 16x, p. 430 (self-evaluation) and p. 860 (on-site evaluation report).

¹³ Pre-2019 version of 34 C.F.R. 602.20(a). The regulatory language was changed in 2019, but due to timing of review, ACCSC was evaluated against the prior version of the regulations, which were in place during the period of review.

¹⁴ See, Final Detailed Analysis, Agency Narrative for 602.20(a), and Exhibits 15, 61-64, and 20a.

¹⁵ ACCSC Internal Protocols and Procedures: Progress Committee & Commission Review of Outcomes Report (Oct. 1, 2019), Exhibit 16h.

placed on warning or another action such as heightened monitoring. Other documentation provided on ACCSC's internal protocols and procedures for when a program falls below benchmark student achievement rates, details a "standard 5-time review process that retains the Commission's authority to take actions at any time as deemed necessary and appropriate (e.g., shorter timeframe) and set forth standardized response timelines and the range of actions available for consideration at each review." It appears from these protocols that programs may continue to fall below benchmark rates for a period of at least three years and potentially longer, although it is not clear that a maximum timeline for enforcement exists.

Especially in light of findings that CEHE has been the subject of ACCSC's scrutiny for nearly a decade without an adverse action prior to April 2021, I ask that ACCSC provide evidence that it takes appropriate action and adheres to its written timeline when it finds an institution or program out of compliance with agency standards and issues a warning or other enforcement action. Evidence should include: how long an institution or program has to demonstrate compliance in the case of student achievement before losing programmatic or institutional approval, and must show that ACCSC adheres to that timeline; and a list of each program or institution ACCSC has placed on heightened monitoring or outcomes monitoring, warning, or probation for student achievement within the recognition period, any subsequent actions it has taken, and the total time it took for the institution or program to resolve its noncompliance.

Timeline for Response and Continuation of Recognition.

Based on information relevant to ACCSC's recognition that was received after the opportunity for Department and NACIQI analysis and agency response, and given that the new information raises questions that are most appropriately addressed by ACCSC and Department staff, I am holding renewal of recognition under 602.36(h)(2) and refer the information cited and questions above to ACCSC under section 602.36(h)(2)(ii) and Department staff under section 602.36(h)(2)(iii). ACCSC must provide a written response, including any supporting documentation not already included in the record, within 75 calendar days, or by January 10, 2022. Department staff must provide a written response within 75 calendar days of receipt of ACCSC's written response. I ask that Department staff's analysis be based only on the existing record and ACCSC's forthcoming written response to ensure that ACCSC has an opportunity to adequately respond to any information involving their recognition.

Pursuant to 34 C.F.R. §602.36(j), ACCSC's current recognition status is automatically extended until such time as I reach a final decision.

Sincerely,

Jordan Matsudaira
Deputy Under Secretary