

U.S. Department of Education Staff Report to the Senior Department Official on Recognition Compliance Issues

Recommendation Page

1. **Agency:** Middle States Commission on Higher Education

(1952 / 2018)

(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)

2. **Action Item:** Petition for Continued Recognition

3. **Current Scope of Recognition:**

The accreditation and preaccreditation ("Candidacy status") of institutions of higher education in Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands, including distance and correspondence education programs offered at those institutions.

4. **Requested Scope of Recognition:**

The accreditation and preaccreditation ("Candidacy status") of institutions of higher education including distance, correspondence education programs and direct assessment programs offered at those institutions. Recognition extends to the Executive Committee to act on behalf of the Commission as necessary on cases of initial, reaffirmed, and continued candidacy or initial, reaffirmed and continued accreditation.

Geographic Area of Accrediting Activities: The United States.

5. **Date of Advisory Committee Meeting:** 02/15/2023

6. **Staff Recommendation:**

Continue the agency's recognition as a nationally recognized accrediting agency at this time, and require the agency to come into compliance within 12 months with the criteria listed below, and submit a compliance report due 30 days thereafter that demonstrates the agency's compliance.

7. **Issues or Problems:**

Remaining issues, if any, are summarized below and discussed in detail under the Staff Analysis section.

[602.26(f)] --

The agency does not meet the requirements of this section. The agency must demonstrate that it has a policy specific to 34 CFR § 602.26(f)(2) related to institutions that allow its accreditation or preaccreditation lapse.

Executive Summary

PART I: GENERAL INFORMATION ABOUT THE AGENCY

Middle States Commission on Higher Education (MSCHE) is a nationally recognized accrediting agency and currently accredits 528 institutions. The agency's recognition enables its institutions to establish eligibility to receive Federal student assistance funding under Title IV of the Higher Education Act of 1965, as amended (Title IV). The agency serves as the Title IV gatekeeper for all but a handful of the institutions it

accredits. Consequently, the agency must meet the Secretary's separate and independent requirements.

Recognition History

MSCHE appeared on the first list of recognized accrediting agencies in 1952 and has received periodic renewal of recognition since that time. The agency was last reviewed for continued recognition at the February 2018 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). After that review, the Department extended the agency's previous grant of recognition for a period of five years. As part of its evaluation of the agency's current renewal petition, Department staff reviewed the agency's narrative and supporting documentation. There was 11 3rd Party Comments received in connection with the agency's renewal petition.

PART II: SUMMARY OF FINDINGS

602.26 Required Operating Policies & Procedures

Description of 602.26(f)

(f) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 10 business days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 10 business days of the date on which accreditation or preaccreditation lapses.

Analyst Remarks to Narrative:

The agency's Communication policy provides that in the event that an institution voluntarily surrenders its candidate for accreditation status or accreditation status, the Commission will notify the Secretary, the appropriate State or other licensing or authorizing agency, the appropriate USDE recognized accrediting agencies, and the public within 10 calendar days of receiving notification from the institution in accordance with Federal regulation. The agency did not attest or provide documentation of its policy related to its notification policy for accredited or preaccredited institutions that let its accredited or preaccredited lapse and the agency

must provide documentation of this policy. (Ex. PP Communication Procedures)

The agency attests that it has not received notification of any institutions intent to voluntarily surrender its accreditation, therefore, documentation of this criterion in practice is not required.

Analyst Remarks to Response:

Although the agency once again provided documentation and policy references to 34 CFR § 602.26(f)(1) related to voluntary withdrawal of an institution's accreditation or preaccreditation, the agency has yet to provide its policy related to 34 CFR § 602.26(f)(2) that speaks to institutions that allow its accreditation or preaccreditation to lapse.

PART III: THIRD PARTY COMMENTS

Staff Analysis of 3rd Party Written Comments

Department staff received 8 third-party comments regarding Middle States Commission on Higher Education (MSCHE), in support of this agency. Some of the comments are from individuals at institutions accredited by MSCHE, with over half of those serving in a volunteer capacity with the agency. The roles of those commenters range from faculty, vice presidents, provosts, and presidents.

The comments in support of MSCHE included support for the agency's individualized and robust review of institutions, extensive training for peer evaluators, and resources available to member institutions. The commenters appreciated the professionalism, support and effective communication from agency staff and volunteers. Many of the commenters remarked on the consistent high standards of MSCHE to ensure the quality of education provided by accredited institutions. One of the commenters even tied their supportive comments to specific sections of the Secretary's Criteria for Recognition including CFR §§ 602.15, 602.16, 602.19, 602.20, and 602.25.

Another comment expressed overall support of MSCHE, but also offered suggestions for improvement – particularly in regard to the amount of time required for continual assessment. The comment from an institutional representative stressed the time commitment required during the review process and that there was repetitive and overlapping information submitted for agency Standards and the Requirements for Affiliation.

In addition to positive comments, the Department received comments on the opposite end of the spectrum. One commenter stated that the Department's solicitation of written third-party comments occurred in a vacuum, as the agency's petition/compliance report or related materials were not made available to the public. The commenter stated that if the agency was in compliance with the requirements of 34 C.F.R. § 602.31(f), then there should be no reason that the agency's petition/compliance report or related materials could not be made available to the public. Since the information and documentation could not be provided, the commenter concluded that the agency must be out-of-compliance with 34 C.F.R. § 602.31(f). This conclusion does not take into account the Department's role in processing and decision-making on requests for public disclosure of agency materials, as described in 34 C.F.R. § 602.31(f)(1). In addition, the Department's solicitation of written third-party comments sought comment on the agency's compliance with the criteria in question pursuant to 34 C.F.R. §§ 602.32(c) and (l), not on the agency's petition/compliance report or related materials. The purpose of the call for written third-party comment is to allow anyone who has any knowledge of an agency undergoing a recognition review by the Department and the agency's compliance or non-compliance with Departmental regulations to provide that information and/or documentation so that Department staff can utilize it in the comprehensive analysis of the agency.

Two comments are related to the use of specific outcomes to determine success with respect to student achievement. Pursuant to 34 C.F.R. § 602.16(a)(1), an agency must have standards that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the educational training provided by the institutions and programs it accredits.

An agency meets this requirement by setting forth clear expectations in its standards for the institutions or programs it accredits to demonstrate, among other things, success with respect to student achievement, which may or may not include specific outcomes. However, the Department is specifically limited by the Higher Education Act of 1965, as amended, at § 496(g), 20 U.S.C. § 1099b(g), from establishing “any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution’s success with respect to student achievement.” Therefore, the Department is prohibited from requiring an agency to use any specific outcome metrics to assess an institution’s/program’s success with respect to student achievement.

One comment included a complaint with respect to an institution’s transition to a non-profit entity. The comment raised questions about MSCHE’s substantive change process, supplemental information report, and the agency’s ability to ensure public disclosure of facts surrounding the transition, quality of education, and transparency to the student population. Department staff noted this comment in Approval of Substantive Changes CFE § 602.22(a)(1)(i).

One comment included a complaint about an institution accredited by the agency. It is unclear based on the comment if the complainant utilized the agency’s complaint policy and procedures prior to submitting this comment to the Department. The Department does not typically commence an inquiry of an agency based on a complaint unless and until a complainant exhausts the agency’s published complaint procedures. Nevertheless, the agency may respond to the complaint in its response to the draft staff analysis.

One comment noted whistleblower allegations related to individual institutions accredited by the agency outside of the current recognition period. The scope of the Department staff’s review focuses on the agency’s compliance with the Secretary’s Criteria for Recognition since the last recognition decision dated May 9, 2018, to include a review of the agency’s monitoring and enforcement activities. Accordingly, the agency’s response to the draft staff analysis should address any monitoring and/or enforcement activities that the agency has undertaken since the last recognition period with regard to any of the issues identified in the comments and should explain what steps it has taken (and is currently taking) to monitor and address the types of issues identified in the comments.

Agency Response to 3rd Party Written Comments

The agency appreciates receiving Third-Party Comments with respect to its recognition process. The agency notes that in January of 2022 it shared the call for written third-party comments issued by the Accreditation Group of the U.S. Department of Education’s Office of Postsecondary Education as part of the renewal of recognition process in an effort to encourage greater participation in the process. Exhibit 00 MSCHE Third Party Comment Narrative Response and Exhibit Additional Third-Party Comments provides the full response addressing all of the third-party comments. Due to space limitations, the agency is placing only a portion of its response here. The third-party comment from Alison E. Vogelaar: The agency appreciates the concerns expressed relating to the agency’s evaluation of quality pertaining to one institution as well as the agency’s complaints process. The agency notes that it is unclear by the commenter what standards, requirements, policies or procedures, or federal regulations may be at issue with the institution identified. The institution’s Statement of Accreditation Status is available at the agency’s website, which shows that while the institution has been accredited since 1975, the agency has monitored the institution and required reporting as necessary. The commenter also shared concerns about the complaints process in that anonymous complaints are not accepted by the agency. The agency has detailed its complaints process in 602.16(a). In order for institutions to be in a position to respond to third-party comments or complaints, the agency does not accept anonymous complaints and follows its established policy and procedures in managing complaints. The third-party comment from Robert Shireman, member of NACIQI: The agency appreciates the concerns expressed relating to the agency’s compliance with 602.31(f). The agency was made aware of a potential FOIA request in early-January of 2022; however, no additional information or formal request was made to the agency. The agency has complied with 602.31(f). Without additional information relating to the FOIA request, the agency is unable to address this; however, the agency reiterates that it undertakes a redaction process prior to submission of any and all materials that are a part of its petition and the recognition process ensuring its compliance with 602.31(f). The third-party comment from Tiara Moultrie, Fellow, The Century Foundation: The agency appreciates the concerns expressed relating to several institutions. The concerns range from the agency’s monitoring of key indicators of student success (Standard V) to honesty and truthfulness in public relations announcements, advertisements, recruiting and admissions materials and practices, as well as in internal communications (Standard II) and to an institution’s conversion from for-profit to non-profit (08-TPC-Complex Sub-Change-Procedures-Aug-1-2022). The agency notes that all institutions are monitored as outlined in the Accreditation Review Cycle and Monitoring as described in 602.19, including those referenced by this commenter. In addition, institution conversions would be guided by the agency’s policy and procedures relating to Complex Substantive Change. The agency followed its policy and procedures to evaluate the conversion by the institution, and additional documentation has been provided in 602.22(a)(1)(i). The agency has also been proactive at attempting to determine the status of the conversion with all partners in the regulatory triad. The agency reviewed and documented receipt of written evidence of all required approvals from the United States Internal Revenue Service, the New York State Higher Education

Department, the Ohio Education Department; the State Council of Higher Education for Virginia (09-TPC-Bryant-Stratton-Required-Approvals-Documentation). On April 5, 2022, the agency requested a status update from the Department regarding this transaction (10-TPC-MSCHE-Letter-USDE-Bryant-Stratton-Apr-5-2022). The agency received the Department's Post-Acquisition Determination Letter on August 12, 2022, confirming the completion of its review and documenting its decision that Bryant & Stratton provided evidence that it meets the Department's requirements to access title IV as a non-profit institution (11-TPC-Bryant-Stratton_Post-Acquisition-Determination-Letter-Aug-12-2022). Since receipt of the Department's Letter, the agency has issued a request for a supplemental information report to monitor the conditions required by the United States Department of Education (12-TPC-Bryant-Stratton Request SIR-TitleIVConditions-Sep-30-2022). Reported within 602.22(a)(1)(i) are also ways that the agency has improved upon the Complex Substantive Change policy, procedures, and forms. The third-party comment from Barmak Nassirian, Veterans Education Success: The agency appreciates the concerns relating to one of its institutions. The agency notes that it has a complaints process that is available to students. With limited information, the agency is unable to verify the student filed a complaint with the agency; however, a search of our records using that student name provided did not reveal one. With limited information, the agency is unable to verify if the employee pursued a complaint with the agency; however, a search of our records did not reveal one. Regarding other concerns noted by the commenter, the agency has described its holistic cycle of accreditation, which includes regular review and monitoring through a number of processes. The agency continues to hold expectations for institutions to promote affordability, enable students to understand and make informed decisions about incurring cost, and comply with disclosure requirements across and throughout its standards, requirements, and policies and procedures. This has been reported in several areas of the agency's petition. This commenter raised an issue with "...706 programs that produced graduates the majority of whom earn less than high school graduates with no college coursework." The agency notes that it has reviewed the data sources provided by the commenter and found that the variables have changed making comparisons year-to-year more difficult. The agency's analysis using more recent data, as a result, shows slightly higher earnings than what is included in the study referenced. The agency also discovered that 74% of the programs at its accredited institutions were excluded from the analysis due to missing earnings data or net price data. The agency notes that all institutions are monitored as outlined in the Accreditation Review Cycle and Monitoring Policy and Procedures (04-TPC-Exhibit PP – Accreditation Review Cycle Policy and 05-TPC-Accreditation Review Cycle Procedures-Oct-1-2022) as described in 602.19, including those referenced by this commenter. In addition, institution conversions would be guided by the agency's policy and procedures relating to Complex Substantive Change (08-TPC-Complex-Sub-Change-Procedures-Aug-1-2022). The agency followed its policy and procedures to evaluate the conversion by the institution, and additional documentation has been provided in 602.22(a)(1)(i). The agency refers to the fuller response already provided to another commenter. The third-party comment representing 16 constituents, including two constituents already listed above with comments for the same institution: The agency appreciates the concerns relating to one of its institutions and refers to commenters 8 and 9 for the agency's response and additional details. In addition, exhibits are contained in the e-recognition portal that address the monitoring and/or enforcement activities that the agency has undertaken since its last recognition period.