



Accrediting Commission of Career Schools and Colleges

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U.S. Department of Education  
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Re: Response of The Accrediting Commission of Career Schools and Colleges  
to the Senior Department Official's October 27, 2021 Letter

Dear Deputy Under Secretary Matsudaira:

The Accrediting Commission of Career Schools and Colleges ("ACCSC" or the "Commission") has a long history of commitment to its mission and student achievement, adherence to the spirit and intent of the federal regulations, and working as a dedicated triad partner with the U.S. Department of Education. In the spirit of that partnership, this letter is submitted for your consideration as the Senior Department Official ("SDO") at the U.S. Department of Education (the "Department"), in accordance with 34 C.F.R. § 602.36(h) and in response to your October 27, 2021 letter requesting that ACCSC provide certain additional information to facilitate your consideration of ACCSC's petition for a renewal of recognition.

More specifically, you requested that ACCSC provide information regarding: (1) the use of policies, procedures, and site visits to evaluate student achievement metrics, particularly as related to employment classifications; (2) the application of monitoring and evaluation approaches, particularly as related to employment classifications; and (3) enforcement of institutional compliance with student achievement metrics within required compliance timelines. Per your October 27, 2021 letter, these requests relate to ACCSC's compliance with three *Criteria for Recognition*: 34 C.F.R. §§ 602.16(a)(1)(i), 602.19(b), and 602.20(a), respectively.<sup>1</sup> It is on these issues that ACCSC submits this response letter.

This letter and the accompanying documentation, as well as the entirety of the record before the SDO,<sup>2</sup> demonstrate ACCSC's ongoing compliance with the *Criteria for Recognition* such that the recommendation of Department Staff that ACCSC's recognition be renewed for a period of five years should be adopted.

## EXECUTIVE SUMMARY

At the outset, it is important to establish that accreditation at its core is a quality assurance and institutional improvement process and, while it is concerned with accountability (particularly with regard to student achievement), it is not, fundamentally, a punitive process. Accreditation is designed to guide

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<sup>1</sup> The Commission understands that the Department's evaluation of ACCSC's compliance with 34 C.F.R. § 602.20(a) is based on the version of the regulation in effect at the time of the relevant Commission action, and that the Department is tasked with evaluating the Commission's compliance with the now-effective *Criteria for Recognition*.

<sup>2</sup> ACCSC incorporates by reference the extensive submissions already in the record demonstrating its compliance with each regulatory requirement, as well as its compliance in the specific areas noted above. In particular, ACCSC emphasizes its Petition for Renewal of Recognition, submitted to the Department on February 1, 2020.

continuously improved school performance within a consistent review and assessment paradigm—one that considers a wide array of subjective factors and allows institutions an opportunity to demonstrate improvement over time. To use accreditation as a quality assessment proxy or as a gatekeeper requires an understanding of, and an appreciation for, the complex, qualitative, and subjective nature of this process as well as deference to the peer review practitioners who employ their knowledge of, and passion for, accreditation’s primary goal—quality education that enhances student’s lives. It is our sincere hope that this response and the volumes of supporting information attached hereto will be reviewed in that light, which has traditionally been the case when reviewing ACCSC’s success under the *Criteria for Recognition*.

This matter is before the SDO by virtue of ACCSC’s petition for renewal of its recognition, submitted on February 1, 2020 (“Renewal Petition”). Following its careful and thorough review of that petition, the Department Staff determined that ACCSC is in compliance with the *Criteria for Recognition*. Despite that well-supported conclusion and the evidence in the record, the National Advisory Committee on Institutional Quality and Integrity (“NACIQI”)—after a haphazard public discussion and conjecture about ACCSC’s work—recommended that ACCSC be recognized for a more-limited duration of time, presumably due to questions relating to ACCSC’s student achievement standards but with no basis or finding of non-compliance with federal regulations. NACIQI’s recommendation also appears to give significantly disproportionate weight to a small minority of schools within ACCSC’s membership: the now-closed schools owned and operated by the Center for Excellence in Higher Education (“CEHE”). In 2016, those CEHE-affiliated schools represented 2.4% of ACCSC-accredited schools and, in 2021—just prior to their closure—represented just less than 1% of ACCSC-accredited schools. Following NACIQI’s recommendation, the SDO determined to postpone his decision “[d]ue to the emergence of information not previously considered in the record [related to the CEHE-affiliated schools] ...and that was not considered during the Department Staff review....” On that basis, the SDO asked ACCSC to provide additional information about accrediting activities for the CEHE-affiliated schools.

As an initial matter, it is worth noting that, while information specific to a Colorado court case concerning a CEHE-affiliated school, ACCSC’s withdrawal of the CEHE-affiliated Independence University’s accreditation, and recent closures of other CEHE-affiliated schools may not be in the record before the SDO, ACCSC has, on multiple occasions, provided the Department with extensive information and documentation relating to its accreditation of all CEHE-affiliated schools. To the extent that the Department did not consider this information in the record of ACCSC’s Renewal Petition, that is likely because this information was carefully considered previously with no compliance concerns. In fact, much of ACCSC’s response to the instant information request was pulled directly from ACCSC’s prior submissions to the Department’s requests for information about ACCSC’s compliance with the *Criteria of Recognition* as it relates to ACCSC’s oversight of CEHE-affiliated schools. This includes information and documents provided to the Department: (1) as part of ACCSC’s 2016 recognition renewal process, (2) in January of 2018, in response to a specific request for information about CEHE-affiliated schools, and (3) in February 2021, in response to specific requests for information relating to the teach-out of CEHE-affiliated schools. Of course, ACCSC is obliged to share this information with the Department again.

It is also worth mentioning, and cautioning the SDO, that the narrative being spun during the NACIQI meeting about ACCSC’s oversight of CEHE-affiliated schools (1) is not new and has been negligently posited by advocacy organizations in the past, and (2) is unsupported by even a scintilla of the evidence. It is unfortunate that this specious narrative continues, but ACCSC welcomes the opportunity to set the record straight and once again demonstrate its compliance with the *Criteria for Recognition* as it relates to ACCSC’s oversight of CEHE-affiliated schools. Indeed, the record is clear that, at all relevant times, ACCSC had appropriate standards for its member institutions (34 C.F.R. § 602.16(a)(1)(i)); it sufficiently evaluated and monitored institutions’ compliance with those standards (34 C.F.R. § 602.19(b)); and, when

it made a finding of noncompliance, ACCSC appropriately used enforcement techniques that adhered to the timeline requirements prescribed in the Department's regulations (34 C.F.R. § 602.20(a)). Moreover, ACCSC not only applied these requirements in accordance with its *Standards of Accreditation*, policies, and procedures generally, but specifically with respect to each of the independent sixteen (16) CEHE-affiliated schools.

Notably, the SDO's concerns about ACCSC's compliance, as described in the October 27, 2021 letter, appear to be based upon some fundamental misunderstandings of ACCSC's *Standards of Accreditation* and the methods ACCSC uses to evaluate, monitor, and enforce compliance. First, the letter appears to assume that, whenever an academic program misses a program-specific student achievement benchmark (*i.e.*, a graduation rate or employment rate), the entire program or institution is "out of compliance" with the *Standards of Accreditation*, triggering an enforcement action against the program or entire institution. As a result, the SDO's letter misconstrues the trigger for the regulatory maximum timeframe for compliance enforcement. Second, the SDO's letter seems to strictly consider ACCSC's practices as enforcement tools that only are used when a determination of noncompliance occurs. This is incorrect and contrary to ACCSC's *Standards for Accreditation*. Indeed, when a student achievement benchmark is not met, ACCSC utilizes a variety of monitoring approaches prior to a determination of noncompliance, including Outcomes Reporting, Heightened Monitoring, and often, a Warning. Consequently, the letter seems to conflate (a) methods used by ACCSC to monitor and assist institutions with improving program-level student achievement performance, with (b) enforcement mechanisms used when ACCSC determines noncompliance with its *Standards*. To the extent this is the SDO's concern, this is a misunderstanding of ACCSC's *Standards of Accreditation*, as well as accreditor oversight approaches, generally.

By way of explanation, ACCSC requires that its member institutions demonstrate a satisfactory level of student achievement, as explained in the *Standards of Accreditation* (Section VII (B), *Substantive Standards, Standards of Accreditation*). ACCSC considers graduation rates, rates of employment in related fields, licensure/certification pass rates, and "other factors that are reasonably related to student achievement as a measure of educational quality and institutional effectiveness."<sup>3</sup> ACCSC has established and published benchmark programmatic graduation and employment rates within an appendix to the *Standards of Accreditation*. An institution's or program's failure to meet a benchmark employment rate may raise questions about whether that institution is complying with ACCSC's *Standards of Accreditation* but is not in and of itself a finding of noncompliance. Again, benchmark rates are one of **multiple** evaluation metrics used by ACCSC to determine whether an institution is complying with its student achievement-based standards.

A question about potential noncompliance—*e.g.*, a failure to meet a benchmark rate—may lead ACCSC to impose a monitoring requirement. Monitoring requirements such as Heightened Monitoring, Reporting (*e.g.*, outcomes, employment verification, litigation, advertising, etc.), or Warnings may each be imposed **absent**, or **prior to**, a finding of noncompliance with the *Standards of Accreditation*. If, however, ACCSC determines that an institution is out of compliance with one or more *Standards*, it will then impose an enforcement mechanism—often, Probation—and require that the institution come into compliance within an identified time period, as set by Commission policy and federal regulation. Of course, ACCSC also has the authority to withdraw accreditation immediately, as allowed by federal regulation. Importantly, the

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<sup>3</sup> ACCSC *Standards of Accreditation* (July 1, 2019), Ch. 2 sec. VII(B)(1)(b)(i), at 107-08 (originally submitted to the Department as "Exhibit 15" of ACCSC's 2020 Renewal Petition) (the most recent version, *ACCSC Standards of Accreditation* (July 1, 2021), is attached hereto as "Exhibit A"). All subsequent citations to ACCSC *Standards* will be to the 2019 version in the SDO's record, unless otherwise noted.



maximum timeframe to come into compliance is only triggered when there is an actual finding of noncompliance and, as such, does not apply to monitoring approaches such as Outcomes Reporting and Heightened Monitoring. This does not mean that schools are left on monitoring requirements indefinitely or that such approaches have no “teeth”; to the contrary, while the institution is complying with the terms of a monitoring requirement, ACCSC is also engaging in an evaluation of the institution’s compliance with the *Standards* and will, as appropriate, reach a finding through the process.

Notably, ACCSC’s use of benchmarks as a factor indicating compliance when assessing student achievement success (and not a bright line), as well as ACCSC’s use of various monitoring practices (distinct from noncompliance enforcement actions) have all previously been approved by the Department on multiple occasions since ACCSC first instituted this approach in 1998. There is no support for a different conclusion here. Moreover, these approaches were all appropriately utilized in ACCSC’s accreditation of the CEHE-affiliated schools.

When considered collectively and in hindsight, it may be tempting to surmise that CEHE, as an ownership and oversight entity, operated schools with “a history of noncompliance.” However, in evaluating the veracity of such a claim, it is vital to keep in mind that **ACCSC did not accredit CEHE, rather, it accredited *individual schools* that were affiliated with CEHE. At various times, certain *programs* at individual CEHE institutions may have dropped below benchmark rates and, thus, a monitoring approach may have been imposed (e.g., Outcomes Reporting or Heightened Monitoring), and the program(s) may have subsequently: demonstrated improvement under such monitoring, been discontinued by the school, or been directed to cease enrolling new students by the Commission. Thus, the fact that a program at an institution in Logan, Utah slipped below a benchmark did not—and could not—negate that a different program at a separate institution in Salt Lake City, Utah had shown improvement and met its benchmark under monitoring.**

To require ACCSC to implement a one-size-fits-all approach to each CEHE-affiliated school would have required ACCSC to ignore its own processes and standards along with the fact that each school had faculty, administrators, and students that were unique to that campus. Plus, it would impose a standard on ACCSC that (a) is not applied to other recognized agencies and (b) would contradict the Department’s own regulations. Indeed, as the SDO is aware, under federal regulations, ACCSC is asked to look at student achievement benchmarks through the lens of an institution’s mission and specific programs, keeping in mind that not all institutions and programs should be treated the same. *See, e.g., 34 C.F.R. § 602.16(a)(1)(i) (“The agency’s accreditation standards effectively address...[s]uccess with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs...”)* (emphasis added). Keeping in mind the Department’s regulations, ACCSC evaluated each institution separately and, **when the Commission determined a specific CEHE-affiliated school to be out of compliance with the *Standards of Accreditation*, ACCSC took appropriate action, and provided a maximum timeframe for achieving compliance.** In the recent case of Independence University, ACCSC provided an extension to the maximum timeframe where the school had shown potential for improvement through a robust set of initiatives; nevertheless, downward trends continued after the extension in student success benchmarks and other compliance areas. Accordingly, after finding that achieving compliance would not occur within even the extended timeframe, ACCSC withdrew accreditation.

Finally, **ACCSC would be remiss if it did not express its shared disappointment about the quick closure of certain CEHE-affiliated schools in the summer of 2021, which occurred on a timeline and in a manner that were antithetical to the teach-out plans and schedules that were communicated to ACCSC.** Similarly, in no way should ACCSC’s explanation of its compliance with the *Criteria for Recognition* be construed in defense of CEHE or its affiliated schools’ actions. To the contrary, ACCSC followed the letter of the



regulations with respect to CEHE-affiliated schools, and for good reason. As the Department is well aware, an SDO determination of noncompliance with the *Criteria for Recognition* is but one consequence that accreditors face when an institution believes, even wrongfully, that its accreditor failed to abide by its standards and provide meaningful due process.<sup>4</sup> As the information contained herein clearly demonstrates, ACCSC does not, and did not, stray from these requirements, particularly with respect to CEHE-affiliated schools, where it applied its standards with fidelity. For this reason, the SDO should adopt the Department Staff's recommendation and renew ACCSC's recognition for five years.

## DISCUSSION

### I. BACKGROUND

As you are aware, the Department is tasked with monitoring accrediting agencies' compliance with the *Criteria for Recognition*, which provide the framework for the criteria and procedures all accrediting agencies must develop and apply. Notably, however, the *Criteria for Recognition* do not require that each agency use specific formulas in its accrediting activities. Rather, the regulations allow agencies to use their expertise and experience to develop and apply, in their judgment, appropriate standards, evaluation approaches, and enforcement mechanisms. The *Criteria for Recognition* serve as a checklist to ensure that agencies have sufficient tools, metrics, and practices to conduct their accrediting activities adequately and fairly.

The Department's oversight of ACCSC and other accreditors considers whether the agencies are operating within the regulatory framework for ensuring the overall quality of accreditation. Importantly, the Department does not evaluate specific accrediting agency actions. Indeed, if the latter were the case, the Department itself would be in the business of accreditation. Rightfully, the Department's regulations recognize the deference and flexibility granted to ACCSC and other accreditors and instead instruct the Department to focus its review on accreditor compliance with the *Criteria for Recognition* rather than on the performance of any specific accredited school.

As explained in the sections that follow, ACCSC has been, and continues to be, in compliance with the *Criteria for Recognition*. First, however, a brief history of how this matter came before the SDO is provided below. Then, as a threshold matter, ACCSC addresses concerns raised during the process of reviewing its petition, including concerns raised by certain members of NACIQI, and the SDO's questions related to institutions affiliated with CEHE and litigation brought by the Colorado Attorney General's office. This is followed by ACCSC's response to the specific questions raised in the SDO's October 27, 2021 letter seeking additional information.

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<sup>4</sup> See e.g., *Independence University v. Accrediting Commission of Career Schools and Colleges (ACCSC)*, AAA Case No. 01-21-0017-0169 (filed Oct. 21, 2021). Independence University, Stevens-Henager College (Murray), and Stevens-Henager College (Boise) submitted a notice of intent to arbitrate the September 17, 2021 ACCSC Appeals Panel Decision affirming the withdrawal of their accreditation due to failure to resolve student achievement issues. The arbitration is ongoing.

## A. Procedural History

The predecessor organization to ACCSC was first recognized by the Department as an accrediting agency in 1967; through a series of mergers and separations, ACCSC developed into its current form. Its recognition was most recently renewed in 2016 for a five-year period, the maximum timeframe allowed under current federal regulations, with no findings of noncompliance.

On February 1, 2020, ACCSC submitted its Renewal Petition. In this Renewal Petition, ACCSC was required to demonstrate its compliance with the required *Criteria for Recognition*. This petition contained ACCSC's self-evaluation of its own compliance with the federal *Criteria for Recognition* as set forth in the Department's July 1, 2019 *Final Memo to Accrediting Agencies* and included over 100 exhibits evidencing ACCSC's compliance.

The Department Staff's review of the Renewal Petition culminated in a July 2021 Final Staff Analysis recommending that ACCSC's recognition be renewed for a period of five years.<sup>5</sup> This recommendation was based on the Department Staff's conclusion that ACCSC met the requirements of the *Criteria for Recognition* as fully supported by the record. Of note, given the SDO's letter and request for additional information, ACCSC has, as documented in the record including the Final Staff Analysis, established not just qualitative factors for evaluating student achievement, but also measurable, robust, quantitative benchmarks around student achievement. The Department's Final Staff Analysis reflects an understanding and appreciation of ACCSC's student achievement benchmarks and related monitoring and enforcement methods.

Consideration of ACCSC's Renewal Petition and the Department's Final Staff Analysis were then shared with NACIQI for its review and recommendation. Remarkably, without articulating any basis in the regulations for its recommendation or any findings of noncompliance with any criteria, NACIQI recommended that the Department approve a shorter duration of recognition for ACCSC than that recommended by Department Staff.<sup>6</sup> This recommendation then was submitted for the SDO's consideration.

After review of NACIQI's recommendation and the record, the SDO has requested additional information on a narrow set of issues related to ACCSC's accreditation of certain institutions which were owned by CEHE and, more specifically, how ACCSC complied with three regulatory criteria with respect to its accrediting activities generally and as particular to the CEHE-affiliated schools. These requirements are, as will be discussed in turn below, student achievement (under 34 C.F.R. § 602.16(a)(1)(i)); monitoring and evaluation (under 34 C.F.R. § 602.19(b)); and enforcement standards (under 34 C.F.R. § 602.20(a)).

In particular, the SDO asked that ACCSC respond to three pieces of information that the SDO concluded were not previously addressed in the record:<sup>7</sup>

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<sup>5</sup> Final Staff Analysis and Recommendation for ACCSC, Dept. of Education (July 2021); Final Staff Report, Dept. of Education (July 2021).

<sup>6</sup> ACCSC's Written Comments to the SDO Regarding NACIQI's Recommendation (Aug. 10, 2021).

<sup>7</sup> To be clear, the Commission has previously provided information to the Department related to CEHE and its affiliated institutions, as discussed in this response. The record before the SDO consists of:

(1) The materials provided to NACIQI:



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.
3. The Colorado District Court findings regarding CEHE's reported employment data, in particular with respect to whether ACCSC should have discovered CEHE's allegedly fraudulent practices under its own accreditation standards and monitoring protocols and what steps it has taken to change its standards and policies in response.

The SDO linked the request for this information to ACCSC's compliance with three *Criteria for Recognition*, asking that ACCSC's response to the above inquiries specifically include evidence of its compliance with three regulatory requirements, as follows:

1. 34 C.F.R. § 602.16(a)(1)(i) – Student Achievement: evidence of how ACCSC, through the use of policies and procedures (including those related to employment classifications) and site visits evaluates student achievement metrics (including those related to employment classification) under ACCSC's standards to ensure consistency with an institution's or program's mission.
2. 34 C.F.R. § 602.19(b) – Monitoring and Evaluation: evidence that ACCSC effectively applies monitoring and evaluation approaches that determine whether graduates should be counted as employed in fields for which they trained based on ACCSC's employment classifications, and whether ACCSC has effective monitoring and evaluation approaches that identify problems with employment classifications.
3. 34 C.F.R. § 602.20(a) – Enforcement of Standards: evidence that ACCSC 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.

Pursuant to federal regulation, the SDO “approves recognition if the [Commission] has demonstrated compliance or substantial compliance with the *Criteria for Recognition*.”<sup>8</sup> For the reasons that follow, ACCSC has demonstrated compliance with all *Criteria for Recognition*, including the *Criteria for Recognition* at 34 C.F.R. § 602.16(a)(1)(i); 34 C.F.R. § 602.19(b); and 34 C.F.R. § 602.20(a). Prior to a

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- (a) ACCSC's Renewal Petition (submitted to the Department on February 1, 2020),
  - (b) The Department's Final Staff Analysis and any supporting documentation (issued on or around July 1, 2021), and
  - (c) ACCSC's response to the *draft* Department Staff Analysis (submitted to the Department on or about April 9, 2021, in response to the draft analysis issued on or about October 9, 2020);
- (2) The transcript of the July 27 – 29, 2021 NACIQI meeting;
  - (3) NACIQI's recommendation; and
  - (4) ACCSC's written comments to the SDO regarding the NACIQI recommendation (submitted August 10, 2021).

See 34 C.F.R. § 602.36(a). The instant submission (including exhibits) by ACCSC, and the Department Staff's forthcoming response thereto, will add to the record before the SDO. See 34 C.F.R. § 602.36(h)(2)(iv). Documents in the record demonstrate ACCSC's compliance with the *Criteria for Recognition*, and—as is discussed in more detail below—the Department previously considered such compliance specifically in relation to the CEHE-affiliated schools.

<sup>8</sup> 34 C.F.R. § 602.36(e).

substantive response to the SDO's inquiries, however, ACCSC believes it is necessary to address some preliminary matters.

## **B. NACIQI's Recommendation**

ACCSC renews its objections to the NACIQI recommendation provided in ACCSC's August 10, 2021 letter to the SDO. As discussed in that letter and further below, NACIQI's recommendation:

- Was incomplete, in that it lacked regulatory rationale,
- Is contrary to the facts as determined and supported in the Department's own Final Staff Analysis, and
- Was based on inapplicable Accreditation Dashboard data and suggested potential bias.<sup>9</sup>

Holding ACCSC to Dashboard data benchmarks rather than ACCSC's own standards would violate the Higher Education Act's prohibition against the Department establishing specific student achievement criteria.<sup>10</sup> We understand from the SDO's October 27, 2021 letter requesting additional information that the Department does not intend to impose such criteria on accrediting agencies by allowing the Dashboard or other unspecified standards to be used as a measuring stick for ACCSC's compliance. We also understand the SDO's intent to apply the *Criteria for Recognition* in a manner consistent with how those criteria have been applied to other accrediting agencies in the past. In other words, we understand that the SDO will not, based on NACIQI's invitation, use Dashboard data or other miscellaneous data points to evaluate ACCSC, when other accrediting agencies are not evaluated in the same manner and this method of evaluation is inconsistent with past practice and federal regulations.

## **C. The Department's Prior Review of ACCSC's Accreditation of CEHE-Affiliated Schools**

We understand this information request may stem, in part, from comments by one member of the NACIQI Committee and one commenter that seem to draw conclusions about whether ACCSC compliantly executed its role with respect to certain schools. For example, the Committee member suggested that ACCSC provided "too much" process to individual ACCSC schools before placing them on Warning or Probation for alleged compliance violations that the Committee member did not articulate.<sup>11</sup> The Committee member referred to ACCSC "mishandling ... CEHE."<sup>12</sup> Comments were made at the NACIQI

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<sup>9</sup> Letter from ACCSC to Deputy Under Secretary Matsudaira (Aug. 10, 2021).

<sup>10</sup> See 20 U.S.C. § 1099b(g) ("Nothing in this chapter shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this chapter shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish 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."). We note that, as discussed in detail below, ACCSC uses its own benchmarks as a monitoring tool to guide interactions with schools around whether they are meeting ACCSC student achievement standards.

<sup>11</sup> See Transcript of NACIQI Meeting, Day 1 (July 27, 2021), p. 71-73.

<sup>12</sup> *Id.* at 77.



meeting questioning aspects of CEHE-affiliated school compliance in areas not regulated by the schools' accreditors.<sup>13</sup> The statements made by both the Committee member and the commenter on this matter are conclusory, with the conclusions drawn based on only a scintilla of the record; as such, they are completely unreliable and under-informed opinions at best.

As described herein, ACCSC provided the schools in question with the precise due process protections that are contemplated under the existing *Criteria for Recognition* and, in turn, ACCSC's *Standards of Accreditation*. To the extent that policymakers wish to modify the requirements expected of all accreditors, the appropriate avenue for such action is through the legislative or regulatory rulemaking process. The Department must refrain from being swayed by shifting policy agendas that are not based in the existing *Criteria for Recognition* and regulatory requirements.

### 1. ACCSC's Interactions with CEHE-Affiliated schools

The Department's October 27, 2021 letter seeks information about specific actions ACCSC took with respect to certain institutions affiliated with CEHE. As noted above, CEHE is not itself an institution accredited by ACCSC. Rather, ACCSC has accredited several institutions owned and operated by CEHE (16 "CEHE-affiliated" main schools and branch campuses, with several separate OPEIDs).

Despite implications to the contrary by at least one NACIQI member, ACCSC's jurisdiction over the CEHE-affiliated schools required ACCSC to work with each institution separately, applying ACCSC's standards, policies, and practices to each school independently, while affording each due process under ACCSC's protocols. To the extent CEHE was involved in providing input into or directing the schools' policies or practices at a corporate ownership level and that input appeared to span across institutions, ACCSC directed the schools to provide information on those issues through CEHE on a system-wide basis. In addition, where several CEHE-affiliated schools faced similar compliance questions, ACCSC provided a system-wide platform for individual school responses to allow the schools to respond collectively to ACCSC's requests without unnecessary duplication. As the extensive record in this matter shows, ACCSC was evaluating CEHE-affiliated institutions comprehensively on both a system-wide basis and a school-level basis.

While it is accurate that ACCSC expressed compliance concerns relating to different issues, over a lengthy period of time, across different programs and at individual CEHE-affiliated campuses, the SDO's characterization of a "near decade of noncompliance" by CEHE is incorrect. Although ACCSC was engaged in compliance reviews and monitoring over a lengthy period of time across several CEHE-affiliated schools, no single CEHE-affiliated school was found to be out of compliance without consequence for any length of time exceeding that permitted by ACCSC's standards or the Department's regulations.

ACCSC's mission is to ensure quality education that enhances student success in the workforce, which is accomplished through a process of self-evaluation, peer review, continuous improvement, quality assessment, and accountability monitoring, including at a program level. The rigorous practices ACCSC imposes to fulfill its mission can result in a series of reviews to evaluate both institutional and programmatic compliance, which should not be taken to represent ACCSC determinations of noncompliance. Indeed, various CEHE-affiliated school *programs* experienced challenges with meeting ACCSC benchmarks at various times (which are discussed more below) but would typically then demonstrate improvement concurrently with other programs at those institutions regularly meeting ACCSC benchmarks.

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<sup>13</sup> *Id.* at 71.

Significantly, although ACCSC is not a programmatic accreditor, it is an exceptionally hands-on accreditor, actively involved in ensuring quality at a program level at great depth, perhaps more so than many, if not most, other institutional accreditors. ACCSC applied this approach to CEHE-affiliated schools and programs. To the extent ACCSC had concerns with a CEHE-affiliated school, ACCSC addressed those concerns in compliance with its *Standards* and *Rules*, including those related to student achievement, monitoring and evaluation, and enforcement.<sup>14</sup> An examination of ACCSC's review of each of the CEHE-affiliated schools shows the depth of ACCSC's review of exceedingly complex issues, reasonable opportunities for the institutions to make corrections and improvements, and all of the due process required by 34 C.F.R. §§ 602.20 and 602.25.

While ACCSC's accreditation of the CEHE-affiliated schools was not within the record before the SDO on ACCSC's Renewal Petition, the Department *has* previously reviewed this information. The Department—including the Accreditation Division—was well aware of the status of all CEHE-affiliated campuses and all elements of ACCSC's actions regarding them. ACCSC kept the Department informed of accrediting decisions as required by 34 C.F.R. § 602.26. Moreover, the Department has at least *thrice* considered ACCSC's accreditation of CEHE-affiliated schools: first, as part of ACCSC's 2016 renewal petition; next, within a 2018 Department inquiry specific to CEHE-affiliated schools; and, finally, in February 2021 regarding the teach-out of several CEHE-affiliated schools.

First, in 2016, and in response to the Department Staff's draft analysis, ACCSC provided to the Department a summary of ACCSC actions regarding federal and/or state investigations and an overview of the highlights of major/relevant compliance actions regarding the CEHE-affiliated schools, as well as thorough supporting documentation (*i.e.*, 252 pages, including a copy of 24 ACCSC letters for each action listed in the overview).<sup>15</sup> This document was included as part of ACCSC's 2016 recognition process as Exhibit 28A, and is listed as evidence supporting the Department Staff's conclusion that ACCSC had documented compliance with § 602.19(b); indeed, the Department 2016 Final Staff Analysis states:

*In response to the Department's staff draft analysis, ACCSC provided the documentation requested. Some cases featured renewals with reporting, deferrals, lifting of sanctions and/or resolution through closure of institutions or programs that enabled lengthy periods of accreditation notwithstanding repeated and numerous problems. Nonetheless the agency worked hard to follow up regarding the institutions in question, did not conceal that it had concerns from the public, and provided information to oversight agencies. The agency has documented compliance with this criterion.*<sup>16</sup>

Exhibit 28A was, of course, part of the record leading to not only the Department Staff's approval, but also that of NACIQI, and the SDO's issuance of a five-year renewal of recognition for ACCSC in 2016. Section 602.19(b), relating to monitoring and evaluation, is now apparently again at issue, despite the Department's explicit approval of ACCSC's approach to monitoring and evaluation of CEHE-affiliated schools in 2016.

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<sup>14</sup> Importantly, the Department's regulations that went into effect in July 2020 allow an institutional accreditor to use its judgment to decide whether action is warranted against a particular program or location as opposed to an entire institution. See 34 C.F.R. § 602.20(d).

<sup>15</sup> CEHE Summary, ACCSC 2016 Petition for Renewal ("Exhibit B").

<sup>16</sup> Final Staff Analysis and Recommendation for ACCSC, Dept. of Education (July 2016) ("Exhibit C").



Second, in January 2018, Mr. Herman Bounds, Director of the Department's Accreditation Group, requested information for a review of ACCSC's accreditation of CollegeAmerica-Denver as well as "other institutions" in the CEHE ownership group, using Department authority under 34 C.F.R. § 602.33 to review an accrediting agency's compliance with the *Criteria for Recognition* based on information that raises concerns relevant to such criteria.<sup>17</sup> This review focused on §§ 602.18(b), 602.19(a), and 602.20(a) (the last of which is also again at issue), apparently in response to Colorado litigation relating to CEHE (discussed in more detail below)—which, likewise, is again at issue, despite being considered and resolved by the Department previously. In its response to the Department's inquiry, ACCSC detailed every substantive step it took with respect to CollegeAmerica-Denver from April 20, 2012, through November 2017.<sup>18</sup> ACCSC also provided to the Department a narrative of the complexities surrounding CollegeAmerica-Denver's accreditation, including ACCSC's regular and additional evaluation of the school, as well as ACCSC's imposition of requirements on CollegeAmerica-Denver to bring itself into compliance within the applicable maximum timeframe under federal regulations and ACCSC's *Standards of Accreditation* (under which the school was operating at the time of ACCSC's March 2018 response to the Department).<sup>19</sup>

At that time, ACCSC explained to the Department when applicable timelines are triggered under ACCSC policies and procedures. ACCSC explained its history with CollegeAmerica-Denver.<sup>20</sup> ACCSC was persistent in its efforts despite complexities posed by fluctuations in individual program performance at CollegeAmerica-Denver, as well as external allegations against the school (including the Colorado litigation discussed below), while still providing the school with the due process required by ACCSC's standards and policies. ACCSC described for the Department its monitoring of the Colorado litigation. Both before and after the Department's inquiry, ACCSC kept the Department informed of all orders related to the CEHE-affiliated schools' status—including their Probation—through regularly scheduled communications with the Department and posting required information into the Department's electronic systems.

The Department accepted ACCSC's March 2018 response to the inquiry related to CollegeAmerica-Denver, offering no additional comment, inquiry, or indication of concerns related to ACCSC's treatment of CEHE-affiliated schools. Indeed, had the Department—and the Accreditation Group specifically—had

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<sup>17</sup> Letter from Director Herman Bounds to ACCSC (Jan. 31, 2018) ("Exhibit D").

<sup>18</sup> See CollegeAmerica-Denver – Background and Highlights of ACCSC Review, ACCSC Response to the Department's CEHE Request (Mar. 15, 2018) ("Exhibit E").

<sup>19</sup> Narrative Response, ACCSC Response to the Department's CEHE Request (Mar. 15, 2018) ("Exhibit F").

<sup>20</sup> ACCSC demonstrated to the Department that it was continuously reviewing CollegeAmerica-Denver's compliance outside the school's standard renewal process, including through three on-site evaluations over a five-year period and several program-level actions, which included a 2017 revocation of approval of the school's baccalaureate programs. In September 2018—after responding to the Department's inquiry and while continuing the trajectory of its ongoing monitoring, evaluation, and enforcement protocols—ACCSC placed CollegeAmerica-Denver, and other individual CEHE-affiliated schools, on Probation, noting, among other factors, several schools' persistent below-benchmark rates related to graduation and employment in certain programs, as well as school practices regarding employment classifications which may have interfered with ACCSC's assessment of student success, when determining that the schools had not otherwise demonstrated compliance with ACCSC student achievement standards. ACCSC applied this order to all of the schools in part due to an apparent commonality among the schools' practices that suggested CEHE influence on these policy decisions at a corporate level. ACCSC issued various instructions to those CEHE-affiliated schools, including instructions to take meaningful action to demonstrate improvement.

such concerns, ACCSC's Renewal Petition process would have been a ripe time for those concerns to have been expressed. Instead, and after active updates and full information about ACCSC's treatment of CEHE-affiliated schools, the Department Staff found ACCSC to be in full compliance with the recognition criteria, thereby resulting in the Department Staff's recommendation that ACCSC receive a full five-year recognition renewal.

Third, in February 2021, the Department requested information and documents regarding the teach-out of numerous CEHE-affiliated schools. In response to an email request from the Department Staff analyst, ACCSC provided information and documentation regarding the closure of a number of CEHE-affiliated schools including copies of teach-out plans, ACCSC teach-out plan approvals, ACCSC requests for additional information, and other documentation.<sup>21</sup> In response, the Department Staff analyst indicated that she would let ACCSC know if the Department had any further questions. No further request for additional information was issued.

Subsequently, the Department again found ACCSC standards and practices compliant in its 2021 Final Staff Analysis of ACCSC's Renewal Petition.<sup>22</sup> Thus, to imply that the Department previously failed to consider ACCSC's accreditation of CEHE-affiliated schools is incorrect. In fact, the Department previously reviewed this matter and found ACCSC in compliance with the *Criteria for Recognition* with respect to its accreditation of CEHE-affiliated schools.

As discussed in more detail below—and in alignment with the Department's acceptance of ACCSC's 2018 response regarding CEHE-affiliated schools and as echoed in the Department's 2021 Final Staff Analysis of ACCSC's Renewal Petition—ACCSC:

- Responded to indications that CEHE-affiliated schools may have been out of compliance with ACCSC standards;
- Acted when potential noncompliance was identified;
- Provided due process before reaching a determination of noncompliance; and
- Imposed appropriate restrictions while supporting students during the wind-down of the schools' operations.

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<sup>21</sup> Narrative Response, ACCSC Response to the Department's Teach-Out Request (Feb. 2021) ("Exhibit G"); ACCSC Teach-Out Agreement Form (2020) (originally submitted with ACCSC Response to the Department's Teach-Out Request (Feb. 2021)) (attached hereto as "Exhibit H"); ACCSC Teach-Out Plan (2020) (originally submitted with ACCSC Response to the Department's Teach-Out Request (Feb. 2021)) (attached hereto as "Exhibit I").

<sup>22</sup> For example, in its 2021 Final Staff Analysis and Recommendation, the Department recognized a 2016 National Center for Higher Education Management Systems ("NCHEMS") external evaluation of ACCSC's *Standards of Accreditation*, finding several aspects of them "to be exemplary and worthy of being recognized and commended," including, among others, ACCSC's Quantitative Outcome Measures and Standards. See Final Staff Analysis (July 2021), at 22.



## 2. ACCSC Acted Regarding CEHE-Affiliated Schools When Other Agencies Did Not

To its knowledge, ACCSC is the only oversight entity that has taken formal, impactful, and ongoing action against CEHE-affiliated schools.<sup>23</sup> No other member of the higher education regulatory triad with oversight of CEHE-affiliated schools—or other regulatory agency for that matter—appears to have revoked approval from CEHE-affiliated schools or programs or prevailed in lawsuits (or other administrative action with a similar terminal sanction) related to issues relevant to this response. This is the case despite the undercurrent of a suggestion in these Renewal Petition proceedings that the schools engaged in conduct so egregious that even ACCSC—an academic, non-investigatory agency—should have discovered it.

As described below, ACCSC did, in fact, act after endeavoring (as required by its policies and procedures) to support the schools in achieving, maintaining, and demonstrating ongoing compliance. ACCSC allowed the schools opportunities to demonstrate compliance when individual programs fell below benchmarks. ACCSC reviewed the schools' operations and academics. And, after providing the schools with the due process mandated by the regulations, ACCSC took appropriate, meaningful corrective action. To ACCSC's knowledge, other agencies—including the Department—did not take meaningful institutional-level action related to the issues about which ACCSC is being questioned at any time before ACCSC withdrew the accreditation of Independence University. This suggests that, in fact, any misconduct was far less visible than has been suggested.

To hold ACCSC's accreditation process or standards primarily, or even partially, responsible for the conduct of any campus or the closure of the final CEHE-affiliated campuses is simply inappropriate. As the record shows, ACCSC was the most active assessment and accountability agent within the regulatory triad having: assessed, monitored, and acted at the system- institution-, and program-level where and when appropriate; managed the widespread teach-out of several of the campuses across multiple states since 2019; continued to monitor compliance through the teach-out process; and taken adverse action with regard to the final remaining CEHE-affiliated campuses after allowing for significant due process through the accreditation process.

### D. The SDO's Consideration of the Colorado Trial Court Proceedings

The SDO requested that Department Staff and ACCSC respond to “[t]he 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 it has taken to change its standards and policies in response.” Significantly, **the Colorado trial court decision is simply inapplicable here.**

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<sup>23</sup> In addition to the Colorado Attorney General’s lawsuit, another lawsuit against CEHE and its affiliated institutions and personnel, *U.S. ex rel. Brooks v. Stevens-Henager College, Inc.*, No. 2:15-cv-119-JNP-EJF (D. Utah) (“Exhibit J”) was filed in 2013 and is now all but dismissed by the court; still pending are limited and unresolved allegations by the U.S. Department of Justice alleging misrepresentations by CEHE-affiliated schools regarding their intent, at the time they signed pre-2014 Program Participation Agreements, to comply with Department Title IV regulations. We understand that the U.S. Consumer Financial Protection Bureau has been investigating certain conduct by CEHE or its affiliated schools since at least 2019, but are not aware of action taken against them. In 2019, the Colorado Division of Private Occupational Schools issued a notice of noncompliance for the CollegeAmerica schools and, in January 2020, did issue a cease-and-desist order; but, in May 2020, the division found the cease-and-desist order moot and decided to take no further action.

ACCSC understands that the SDO's discussion of CEHE in the October 27, 2021 letter is **not** aimed at determining whether CEHE engaged in certain misconduct alleged by the Colorado Attorney General in the Colorado District Court case. That case expressly considered issues of state civil consumer and lending law—and not whether ACCSC fulfilled its obligations under federal regulations and followed its own standards, policies, and procedures with respect to CEHE. There is an important distinction between **allegations** by an outside agency suggesting an institution may have engaged in conduct that does not comply with ACCSC standards, and a **determination** by ACCSC that evidence indicates that noncompliance occurred. The latter demands that ACCSC provide due process and appropriate opportunities to correct course, regardless of the findings of another adjudicator.<sup>24</sup> Moreover, the “findings” referenced in the SDO's request have now been vacated by the Colorado Court of Appeals, as of August 2021, and the matter has been sent to a different judge for a new trial.<sup>25</sup>

It is worth considering, though, that, unlike the Colorado Attorney General's Office, ACCSC is neither a civil nor a criminal investigatory agency. The Colorado Attorney General's Office is not constrained by the same formal due process requirements accreditors are, and is not bound to provide an investigatory target with the formal due process protections during an investigation before filing suit. Unlike a state investigatory agency, accrediting agencies do not have oversight over groups of structurally independent institutions collectively, or the jurisdiction to package the alleged compliance concerns of a group of such schools to implement corrective action. Instead, such agencies must, within the bounds of their standards and policies, monitor for compliance and noncompliance while providing due process to each accredited member school, as ACCSC did in the case of the CEHE-affiliated schools.

Still, in the Colorado case, even without accreditors' due process constraints and after a years-long investigation of the specific state law issues at hand, even the Colorado Attorney General's Office does not have a verdict on the issue as to whether the schools involved or CEHE engaged in violations of the state consumer protection laws. This occurred even though the standard of proof required the Attorney General to establish violations only by a “preponderance of the evidence”—sometimes expressed as “50% of the evidence plus a feather.”

Finally, we note that the Colorado case—and, thus, to some extent, the Department's questions about it—addresses conduct that occurred as far back as 2005, with a focus around the 2006-2015 timeframe. ACCSC's policies, procedures, and practices went through renewal petition processes with the Department **three times** from 2005 to 2016 where the Department found that ACCSC was in compliance with its obligations. To the extent ACCSC's interactions with CEHE-affiliated schools raised concerns about potential noncompliance during the time at issue in the Colorado case, those concerns were resolved through ACCSC's application of its policies and procedures. Now, at most, it is for the Department to consider whether, from 2016 onward, ACCSC complied with its obligations with respect to each CEHE-affiliated school, including whether it followed appropriate policies and procedures in relation to that

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<sup>24</sup> The regulations, of course, could be amended to provide otherwise in cases of trial court findings.

<sup>25</sup> See *Colorado v. Center for Excellence*, No. 2021COA117, at 4 (Colo. Ct. App. Aug. 26, 2021) (“Exhibit K”) (taking issue with the trial court's findings of fact and conclusions of law, issued over two years and nine months after trial, in part because much of it was copied verbatim from the Colorado Attorney General's proposed order); *id.* at 6 (reversing and ordering a retrial for all of the Attorney General's Colorado Consumer Protection Act claims because the trial court erred when it decided that the Attorney General did not have to prove that CollegeAmerica's conduct significantly impacted the public); see generally *Colorado v. Center for Excellence*, No. 20CA1692 (Colo. Dist. Ct. Aug. 21, 2021) (“Exhibit L”).



school's student achievement data. The *vacated* findings of the Colorado trial court have no legal significance. Even if they had survived appellate review, they reveal nothing regarding ACCSC's *current* compliance.

## II. ACCSC's POLICIES AND PROCEDURES COMPLY WITH THE *CRITERIA FOR RECOGNITION*.

As required by the *Criteria for Recognition*, ACCSC sets student achievement standards for the institutions and programs it accredits, and has policies and procedures to monitor, evaluate, and enforce those standards. ACCSC's standards and policies, as relevant to the three regulatory criteria identified by the SDO and the three CEHE-related questions posed by the SDO, are identified here.

### A. Regulatory Requirements

All accrediting agencies are required to have Accreditation and Preaccreditation Standards for the institutions they accredit, as set forth at required *Criteria for Recognition* 34 C.F.R. § 602.16. More specifically:

*The agency must 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.*<sup>26</sup>

By regulation, the agency complies with this requirement if it has accreditation standards that “set forth clear expectations for the institutions or programs it accredits”<sup>27</sup> in certain areas, including as relevant here, student achievement. Pursuant to 34 C.F.R. § 602.16(a)(1)(i), and as identified by the SDO, the agency must have such clear expectations related to:

*Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.*<sup>28</sup>

Similarly, the *Criteria for Recognition* require that all accrediting agencies monitor and reevaluate the institutions and programs they accredit.<sup>29</sup> As relevant here, 34 C.F.R. § 602.19(b) requires:

*The agency must demonstrate 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*

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<sup>26</sup> 34 C.F.R. § 602.16(a).

<sup>27</sup> 34 C.F.R. § 602.16(a)(1). This regulation was amended effective July 1, 2020, and previously stated that agencies' accreditation standards must “effectively address the quality of the institutions or programs it accredits.” The Commission's accreditation standards both “set forth clear expectations” *and* “effectively address” institutional or programmatic “quality,” as explained herein.

<sup>28</sup> 34 C.F.R. § 602.16(a)(1)(i). This provision was not amended in the regulatory amendments effective July 1, 2020.

<sup>29</sup> 34 C.F.R. § 602.19.



*and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(g). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.*<sup>30</sup>

As explained above, 34 C.F.R. § 602.16 requires the agency to have accreditation standards addressing, in relevant part, “[s]uccess with respect to student achievement in relation to the institution’s mission . . . including, as appropriate, consideration of . . . job placement rates.”<sup>31</sup> Accordingly, the SDO has requested 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” and “demonstrate that it effectively applies monitoring and evaluation approaches to identify problems with employment classification and that these approaches are effective in identifying problems.”<sup>32</sup>

Finally, the *Criteria for Recognition* require that accrediting agencies act against non-compliant institutions and programs. More specifically, 34 C.F.R. § 602.20(a) states,

*If the agency’s review of an institution or program under any standard indicates that the institution or program is not in compliance with that 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*

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<sup>30</sup> 34 C.F.R. § 602.19(b).

<sup>31</sup> 34 C.F.R. § 602.16(a)(1)(i).

<sup>32</sup> Letter from Deputy Under Secretary Matsudaira (SDO) to ACCSC (Oct. 27, 2021). The Department’s October 27, 2021 letter says, “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.” *Id.* at 5. While ACCSC does consider measures of student employment in their field of study as an indicator of whether a program or institution is achieving its stated learning goals and deploys benchmarks to support student success, the Department’s letter overstates the regulatory necessity of such data. 34 C.F.R. § 602.16(a)(1)(i) requires that accrediting agencies provide expectations for institutions related, in relevant part, to: “(i) Success with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs, as established by the institution . . .” The regulations do not provide that employment classifications are determinative of an institution’s or program’s economic success or whether an institution is fulfilling its mission. One only need look at the employment-in-field data for liberal arts programs at a number of institutions across the nation—some at “top” institutions—in which graduate employment-in-field numbers are less than ideal, to conclude that accrediting agencies are not required to examine employment classification data in detail, much less to launch independent, comprehensive investigations into the validity of such data provided by institutions.

That said, ACCSC goes above and beyond regulatory requirements to ensure reported rates of employment reflect positions that students would have expected to attain at the time of enrollment—not just positions in the field but sustainable positions (*i.e.*, “real” jobs). ACCSC should be neither penalized nor held to a higher expectation by the Department due to the agency’s high standards. ACCSC has established reliable standards and rules to which it adheres and which it expects its accredited institutions to meet, as ACCSC has repeatedly demonstrated to the Department.

*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.*<sup>33</sup>

The SDO has thus asked for “evidence that [ACCSC] 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.”<sup>34</sup> As addressed above, the crux of the SDO’s concern appears to lie with the Commission’s accreditation of CEHE-affiliated schools; or, specifically, whether the Commission properly evaluated whether such schools were complying with its student achievement standards (particularly with respect to employment data), whether the Commission’s monitoring of such school’s compliance was adequate, and whether the Commission properly followed enforcement timelines when it determined a school had failed to comply with the Commission’s accreditation standards. ***The answer to these questions is unequivocally in the affirmative.***

As is clear from the regulatory language quoted above—as well as from the statute addressing student achievement standards, which provides agencies with flexibility in designing student achievement standards<sup>35</sup>—accrediting agencies have flexibility in both setting standards and in monitoring, evaluating, and enforcing their member schools’ compliance with their standards. As explained below, ACCSC applies its policies and procedures and utilizes site team visits to evaluate student achievement metrics, particularly employment classifications, in accord with ACCSC’s own standards to ensure consistency with institution and program mission, as required by 34 C.F.R. § 602.16(a)(1)(i). ***And*** ACCSC effectively applies monitoring and evaluation approaches to verify that employment rates are accurate, including whether graduates should be listed as employed in their field of training and to identify problems with employment classifications, as required by 34 C.F.R. § 602.19(b). In instances where ACCSC determines that a member school has failed to comply with an accreditation standard, the Commission imposes a timeframe in which the school must come into compliance that is aligned with the requirements of 34 C.F.R. § 602.20(a). As

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<sup>33</sup> 34 C.F.R. § 602.20(a) (as effective before July 1, 2020). This regulation was amended effective July 1, 2020; the Commission is evaluated against the version quoted above, in effect at the time of Renewal Petition. Letter from SDO to ACCSC (Oct. 27, 2021), at n.13. The currently effective provision states,

If the agency’s review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—(1) Follow its written policy for notifying the institution or program of the finding of noncompliance; (2) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency’s decision-making body, based on the nature of the finding, the stated mission, and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the—(i) Length of the program in the case of a programmatic accrediting agency; or (ii) Length of the longest program at the institution in the case of an institutional accrediting agency; (3) Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe described in paragraph (a)(2) of this section when such an extension is determined by the agency to be warranted; and (4) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, provide ongoing monitoring, if warranted, and evaluate an institution’s or program’s progress in resolving the finding of noncompliance.

34 C.F.R. § 602.20(a) (as effective July 1, 2020).

<sup>34</sup> Letter from SDO to ACCSC (Oct. 27, 2021), at 6.

<sup>35</sup> See 20 U.S.C. § 1099b(a)(5).

described below, this occurred with respect to CEHE-affiliated schools, as well with respect to other institutions.

**B. ACCSC's Student Achievement Standards Comply with 34 C.F.R. § 602.16(a)(1)(i))**

ACCSC takes both a qualitative and quantitative approach to measuring whether its member schools meet student achievement standards, having adopted the following substantive policies:

- *Section VII (B)(1)(a), Substantive Standards, Standards of Accreditation*: “The school demonstrates successful student achievement by documenting through its assessment practices that students are acquiring the knowledge, skills, and competencies intended by the program objectives.”<sup>36</sup>
- *Section VII (B)(1)(b), Substantive Standards, Standards of Accreditation*: “The school demonstrates successful student achievement by maintaining acceptable rates of student graduation and employment in the career field for which the school provided education as well as acceptable pass rates on licensure/certification exams where required by governmental entities to work in a particular career field. The school supports student achievement rates through student transcripts, the school’s verifiable records and documentation of initial employment of its graduates, and exam pass rate data obtained from the requiring entity.”<sup>37</sup>
- *Section VII (B)(1)(b)(i), Substantive Standards, Standards of Accreditation*: “The Commission will review student achievement for each program offered at an institution and will consider not only the rates at which students graduate from a training program, attain employment in a training related field, and pass licensure/certification exams required for employment, but also other factors that are reasonably related to student achievement as a measure of educational quality and institutional effectiveness.”<sup>38</sup>
- *Section VII (B)(1)(b)(ii), Substantive Standards, Standards of Accreditation*: “The Commission establishes and publishes the benchmark graduation and employment rates from information submitted in the Annual Reports of accredited schools. The Graduation and Employment Chart is the Commission’s mechanism for collecting student achievement data and schools must provide this information in accordance with the prescribed requirements and instructions that accompany this chart. A school demonstrates an acceptable level of successful student achievement when graduation and employment rates meet or exceed the established benchmarks.”<sup>39</sup>

The Commission’s policies and procedures apply a holistic approach to evaluating whether institutions have met these *Standards*. ACCSC uses its own program-level quantitative benchmarks as one means of gauging program-level—and, taking programs collectively, institutional—success around student achievement. These benchmarks relate to the rates at which students graduate from a training program, attain employment in a training related field, and pass licensure/certification exams required for

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<sup>36</sup> ACCSC *Standards* (2019), Ch. 2 sec. VII, at 104.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 105.

<sup>39</sup> *Id.*



employment.<sup>40</sup> In addition to these benchmarks, when considering institutional compliance with student achievement standards, ACCSC also considers other factors that are reasonably related to student achievement as a measure of educational quality and institutional effectiveness, again taking both a qualitative and quantitative approach.

Importantly, the Commission understands that a single data point may not reflect the totality of a program's performance, or circumstances, or fit within an institution's mission. As such, for any program that has a graduation, employment, or licensure/certification exam pass rate that is lower than the Commission's established benchmark rates, the school may still demonstrate with supporting documentation the successful achievement of its students in that program by providing other reliable indicators of successful student learning and by showing that factors such as economic conditions, state and national trends, location, student population served, length of program, students who withdraw from training but still obtain employment, state requirements, or other external or mitigating factors reasonably related to student achievement are adversely impacting the school's ability to meet the Commission's established benchmark rates.

ACCSC's student achievement standards comply with the federal regulatory requirement that the Commission have standards related to "[s]uccess with respect to student achievement in relation to the institution's mission" that are clear to the institutions and programs it accredits. Beginning in 1998, ACCSC established and published quantitative benchmark rates of student achievement in the areas of graduation and employment.<sup>41</sup> Unlike many other accreditors,<sup>42</sup> for over two decades ACCSC has chosen to publish, consistently apply, and enforce these *programmatic* benchmark graduation, employment, and

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<sup>40</sup> *Id.* This includes any exam that is required by a governmental entity for employment in a field, regardless of the exam's title or whether passing the exam results in a license, certification, or any other validation credential.

<sup>41</sup> The most recent established benchmark student achievement rates are found in *Appendix VII* of the *Substantive Standards, Standards of Accreditation*. See *id.* at 124. To establish the currently published rates and as part of its ongoing commitment to ensuring the validity and reliability of its standards, ACCSC conducted an 11-year longitudinal study of the graduation and employment data reported for the period 2005-15. In that study, ACCSC found that the data collected demonstrated stable and reliable results from which ACCSC was able to set consistent benchmarks and program expectations in the areas of graduation and employment. With regard to licensure/certification exam pass rates, the Commission has determined licensure/certification exam pass rates to be acceptable when at least 70% of the students that take the exam attain a passing score; if another entity or agency regulating an institution or its graduates requires a higher examination pass rate, the higher standard applies and the Commission takes into consideration any action taken by another oversight entity or agency with regard to a school's failure to meet an examination pass rate requirement. See 2019 School and Student Characteristics and Outcomes, ACCSC (current as of June 20, 2018), at 12-13 (originally submitted to the Department as "Exhibit 19d" of ACCSC's 2020 Renewal Petition) (the most current version, 2021 School and Student Characteristics and Outcomes, ACCSC (current as of June 20, 2020), is attached hereto as "Exhibit M").

<sup>42</sup> Notably, many accreditors do not set benchmarks at all and, rather, allow *institutions* to select their own analytic measures to be used in monitoring compliance. See, e.g., *Standard V (Educational Effectiveness)*, *Standards for Accreditation and Requirements of Affiliation*, Middle States Commission on Higher Education (MSCHE) (May 2015) ("Exhibit N"); *Interpretation of Core Requirement 8.1 (Student Achievement)*, Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) (Dec. 2019) ("Exhibit O"); *Self-Study Guide*, New England Commission of Higher Education (NECHE) (2020), at 22-24 ("Given the diversity of institutions in New England, there is no single way to carry out assessment. The accreditation system is best served when institutions choose the assessment method that fits their mission...") ("Exhibit P").

licensure/certification exam passage rates.<sup>43</sup> The ACCSC Graduation and Employment Chart (“G&E Chart”) is the Commission’s mechanism for collecting, for each program, the rate at which students graduate from a program and the rate at which those graduates obtain employment in a training related field.<sup>44</sup> These benchmarks and corresponding tools for use by schools in documenting their graduation and employment outcomes are one way in which the Commission clarifies one aspect of its expectations for schools regarding student achievement standards. ACCSC has applied the benchmarks in largely the same manner since they were first established over twenty years ago. Throughout its history, ACCSC has clearly and consistently demonstrated its commitment to studying and improving its standards for student achievement.<sup>45</sup>

ACCSC requires institutions to use the G&E Chart to establish a reporting period and to follow cohorts of students that start a program at the same time within that period. Through this uniform approach, ACCSC can use a universal data set for benchmarking purposes and establishing student achievement expectations. Because this is institutional data reported by the institutions (as is IPEDS data, for example), ACCSC requires the schools to support the reported student achievement rates through student transcripts, the school’s verifiable records and documentation of initial employment of its graduates, and exam pass rate data obtained from the requiring entity, which is not required for IPEDS data.<sup>46</sup> This process will be discussed more fully below in response to the specific request for information in this area.

As also discussed in more detail below, ACCSC uses the benchmarks to evaluate areas where schools may need to pay heightened attention to certain outcomes within their programs—a guidepost for ensuring the schools do not eventually drop below standards into noncompliance in their overall operations. However, to be clear, failure to meet a student achievement benchmark does not alone indicate noncompliance, which appeared to be the implication during NACIQI’s discussion on this issue. Rather, failure to meet a benchmark begins a process of review and monitoring whereby, over time, an institution has an opportunity to assess the factors impacting rates of student achievement, develop and implement strategies to overcome those factors, and analyze the efficacy of its efforts.

In short, ACCSC’s student achievement standards set forth clear expectations for student achievement outcomes. They also establish a process by which institutions have an opportunity to improve those

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<sup>43</sup> See 2019 School and Student Characteristics and Outcomes, at 12.

<sup>44</sup> ACCSC provides institutions with a thorough, step-by-step guide to reporting and verifying their graduation and employment data. See *Blueprints for Success: ACCSC’s Graduation and Employment Chart* (one of several guidance documents related to these data, used in combination with additional tools discussed below) (originally submitted to the Department as “Exhibit 15e” of ACCSC’s 2020 Renewal Petition).

<sup>45</sup> ACCSC first promulgated the quantitative student achievement standards in 1998 based upon several studies conducted by the Center on Education and Training for Employment at the Ohio State University. In 2002, ACCSC engaged in a comprehensive study of the student achievement requirements promulgated in 1998 and the associated processes of data collection and verification. In 2015, the Commission engaged in a ten-year longitudinal study, which formed the basis for ACCSC’s current student achievement rates. The established rates are semi-permanent, meaning that, while ACCSC will continue to study and assess the reported rates of student achievement regularly, as of now, ACCSC does not intend to adjust the rates unless the data suggest that an adjustment is warranted. A review of the most recent three-year data (2018-2020) demonstrated that the graduation benchmarks remain consistent with the longitudinal study. Ex. M, at 12.

<sup>46</sup> For the Commission’s *Guidelines for Employment Classification*, see ACCSC Standards (2019), App. VII, at 125.

outcomes when indicators dictate intervention and require the institution and the Commission to engage in holistic review and assessment of a schools' success in this area.

**C. ACCSC's Evaluation and Monitoring Practices Related to Student Achievement Standards, Applied to All Member-Institutions, Comply with 34 C.F.R. § 602.19(b)**

With respect to student achievement outcomes, ACCSC's approach is highly engaged and comprehensive. ACCSC's review of student achievement has a wide range of options and considers both qualitative and quantitative standards with regard to various circumstances at a school that go beyond a one-dimensional dataset and established benchmarks. The Commission reviews student achievement for each program offered at an institution and will consider not only the rates at which students graduate from a training program, attain employment in a training related field, and pass licensure/certification exams required for employment, but also other factors that are reasonably related to student achievement as a measure of educational quality and institutional effectiveness.

Accreditation is a quality assurance process and is not intended to "flip the switch off" based on numbers without providing an opportunity for improvement and considering important quantitative and qualitative factors. Where a potential concern arises, accreditation is a process designed to drive improvement rather than to penalize or sanction. As stated in the Executive Summary, accreditation is designed to guide continuously improved school performance within a consistent review and assessment paradigm, and, considering a wide array of subjective factors, allow institutions to demonstrate improvement over time. To use accreditation as a quality assessment proxy or as a gatekeeper requires an understanding of, and an appreciation for, the complex, qualitative, and subjective nature of this process as well as deference to the peer review practitioners who employ their knowledge of, and passion for, accreditation's primary goal—quality education that enhances student's lives.

In addition to the extensive compliance review required for initial or renewed accreditation, ACCSC maintains comprehensive reporting mechanisms to monitor institutions throughout their accreditation period, including the Annual Report and supplemental submissions and on-site visits as appropriate; and ACCSC confirms certain metrics through independent, third-party reviews. Through these processes, ACCSC evaluates and monitors compliance with student achievement standards for all institutions on an ongoing basis, especially in relation to completion, and employment classifications.

**1. Annual Reports, Program Benchmarks, and Additional Required Information**

Each year, all ACCSC-accredited institutions are required to submit an Annual Report.<sup>47</sup> The Annual Report includes a Program Enrollment Summary, a G&E Chart, and in some cases a Retention Chart.<sup>48</sup> ACCSC reviews each Annual Report and notifies a school if its report raises questions about whether the

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<sup>47</sup> ACCSC Standards (2019), Ch. 1 sec. V(B), at 39.

<sup>48</sup> See *Instructions for Completing the ACCSC 2021 Annual Report*, ACCSC (Aug. 19, 2021), at 3 (the 2019 version of this document was originally submitted to the Department as "Exhibit 19a" of ACCSC's 2020 Renewal Petition) (attached hereto as "Exhibit Q").



school has demonstrated compliance standards, provides an opportunity to respond, and may request additional reporting from the institution on an ongoing basis.<sup>49</sup>

Questions may arise from, among other things, individual program outcomes falling below ACCSC benchmark rates related to student achievement. Although ACCSC is an institutional accreditor, the agency requires schools to report program-level outcomes. ACCSC encourages its schools to use the student achievement benchmark rates as an assessment starting point and expects schools to set the highest attainable goals regarding student success in the areas of graduation, employment, and licensure. As discussed throughout this response, a school that reports a below benchmark graduation rate or employment rate *is not* initially or immediately found to be out of compliance. Instead, reporting a below benchmark outcome triggers a fact-finding and monitoring process. A school is given time to improve its rates of student achievement and, as discussed further below with respect to site visits, may still demonstrate successful student achievement by providing other reliable indicators of successful student learning, and by showing that factors such as economic conditions, and state and national trends, are adversely impacting the school's ability to meet the benchmark rates.<sup>50</sup> Importantly, a school is not necessarily out of compliance when some of its programs do not meet benchmarks. Institutions often report below-benchmark rates in some programs while reporting rates well-above benchmarks in other programs, such that, when considered in light of other factors discussed below, the institutions themselves meet ACCSC institutional accreditation standards. Significantly, ACCSC is not alone in this approach, as generally assessment and monitoring for improvement over time is a fundamental tenet of accreditation. For example, programmatic accrediting agencies often closely monitor employment, completion, and licensure rates and do not automatically find a program "out of compliance" if it is below the agency's set benchmark.

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<sup>49</sup> ACCSC *Standards* (2019), Ch. 1 sec. V(B), at 39-40. Also, the Commission may require schools to submit additional information (or take additional action) in cases of marked enrollment growth, Cohort Default Rates trending high, or a school losing eligibility to participate in Federal Student Aid programs. *Id.*

<sup>50</sup> As part of the Department's renewal of recognition processes for other accreditors, the Department appears to acknowledge the difficulty of applying student achievement metrics in stringent fashion. For example, the Commission agrees with the Department's decision to grant a five-year recognition to another national accrediting agency, which described its outcome metrics as follows:

*...the student graduation rate and student placement is a very complex process. And I wish that it was, as Member Blum had said, was a little bit more scientific. We, too, would love for it to be a bit more scientific. Unfortunately, there are lots of extenuating circumstances that are way beyond the schools' control that create a process of keeping students in their programs. And, unfortunately, there's not much anyone can do about it, including students.*

Transcript, NACIQI Meeting (Mar. 5, 2021), at 215 ("Exhibit R"). On July 27, 2021, various NACIQI members raised concerns with relying on benchmarks, and indicated that NACIQI has been inconsistent in the application of § 602.16 to various accreditors. *See* NACIQI Transcript (July 27, 2021), at 23. Commissioner Blum stated, "I'm not necessarily suggesting that we rely on benchmarks, and I think we can't statutorily..." *Id.* at 84. Commissioner Blum further commented, "I am extremely concerned from a consistency standpoint. Because if I'm going to make a decision on this... or we're going to make a decision on this agency, then every single one that we look at from a process standpoint has to be similar... doesn't have to be identical. But there needs to be some rationale here..." *Id.* at 122. Commissioner Keiser raised similar concerns, asking, "How about those agencies that do not have any bright lines? I mean, they have a bright line, they hold to it, they publish it. Institutions are required to follow it, but we earlier, I recognized an agency that had no bright lines and no specific definition of what is an appropriate outcome or appropriate outcome assessment. So how do you justify taking the position on one and not the other?" *Id.*

As the Department Staff stated in support of their conclusion that ACCSC was in compliance with 34 C.F.R. § 602.19(b), ACCSC's Student Achievement Protocol "ensure[s] greater consistency regarding Commission actions and the monitoring of student achievement" and ACCSC's Outcomes Reporting "requires the submission of student achievement data, records of initial employment, and any other information that ACCSC determines necessary for the Commission to make a judgment regarding the successful achievement of students."<sup>51</sup>

## 2. Third-Party Verification

ACCSC goes above and beyond the requirements of the regulations to confirm graduate employment rates by requiring independent third-party verification of those rates in various circumstances. More specifically, in addition to the data verification during on-site evaluations, ACCSC (a) requires all accreditation applicants (initial and renewal) to obtain third-party verification of employment data and (b) conducts an independent verification process on a random sampling of graduation and employment data submitted by all accredited institutions in the Annual Reports.

In 2011, ACCSC began engaging an independent third party to perform the random sampling verification. The third-party reviewer verifies a sample of employment data reported by institutions in their Annual Reports.<sup>52</sup>

In 2014, ACCSC added the requirement that institutions going through the initial or renewal of accreditation process have at least 50% of the school's most recently reported Annual Report employment data verified by an independent third party—much the way that financial statements are audited. The purpose of the requirement is (a) to assess the school's compliance with *Section VII (B)(1)(b), Substantive Standards, Standards of Accreditation* and whether the school has "verifiable" records of employment and (b) to ensure that the institution's records can be relied upon in making decisions about a school's compliance with ACCSC's student achievement standards and benchmarks.<sup>53</sup>

The Commission has had to establish expectations for both the institutions and the independent, third-party reviewers over time, as no such requirement existed in the accreditation community at the time (nor is there today an analogue on par with ACCSC's policies or requirements). ACCSC requires institutions to maintain files and records that contain sufficient information to be "verifiable" by third parties such as the Commission or an independent auditor.<sup>54</sup> This is not just an "audit" of the school's back-up documentation: the independent third party, without assistance from the school other than the school's records, must obtain verification of the employment records from the employer or graduate either verbally or in writing. For third-party verifications required in connection with initial or renewal applications, schools must provide

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<sup>51</sup> Final Staff Analysis (July 2021), at 67.

<sup>52</sup> See *Blueprints for Success: G&E Chart*; ACCSC *Standards* (2019), Ch. 1, sec. V(B), at 39-40; Ex. Q, at 3; Ex. M, at 14-15.

<sup>53</sup> Ex. M, at 14.

<sup>54</sup> ACCSC *Standards* (2019), App. VII, at 125. This information must include, at minimum, Graduate Name and Contact Information; Program Name; Date of Graduation; Date of Initial Employment; Place of Employment; Employer Address; Employer Contact Person/Supervisor and direct contact information; and Descriptive Job Title (please also provide job duties if the job title is insufficient to demonstrate alignment with program name). *Id.*

the full reports of the independent third-party verification of employment data to the ACCSC on-site evaluation team.<sup>55</sup> The guidelines for this process can be found online in the Commission's *Guidelines for Independent Third-Party Verification*.<sup>56</sup>

These two methods of independent third-party verifications provide an additional level of confirmation, and facilitate further self-evaluation, improvements in operational procedures, and assist schools in meeting the burden of demonstrating ongoing compliance with accrediting standards. In the event third-party verification indicates meaningful errors in institutional employment rate reporting, as with errors in employment classifications identified in site visits as discussed below or failure to meet benchmarks noted on Annual Reports, ACCSC will direct the institution to submit additional information. This may include, where appropriate, updated institutional policies and procedures related to collecting and reporting the data or additional reports, which ACCSC will evaluate and monitor for improvement and overall compliance going forward.

### 3. On-Site Visits

In addition to employing annual reporting, benchmarks, and requirements for additional information and reporting to evaluate and monitor student achievement, ACCSC uses on-site evaluations as part of its comprehensive and ongoing review. On-site evaluations are required for initial and renewal accreditation applications and for any substantive changes, as described in Section IV, *Rules of Process and Procedure, Standards of Accreditation*. In addition to regularly scheduled on-site visits, the Commission or the Executive Committee may direct a special (announced or unannounced) on-site evaluation of a school as a means to consider and assess compliance.<sup>57</sup>

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<sup>55</sup> ACCSC further requires institutions to demonstrate the independence of the third-party by submitting a signed attestation from the third-party that includes confirmation that: the independent third-party, and its employees, are not affiliated with the school or share any part ownership in the school or its affiliated schools; the independent third-party does not provide any other services to the school; the independent third-party will only report accurate findings through work conducted in an independent manner; and the independent third-party understands and applied the classifications defined in the G&E Chart exactly as stated. Institutions must also submit the verification agency's methodology for selecting the 50% sample and the verification process. ACCSC *Guidelines for Independent Third-Party Employment Verification*, at 2 ("Exhibit S").

<sup>56</sup> *Self-Evaluation Report: Renewal of Accreditation*, ACCSC (July 1, 2019), at 29 (originally submitted to the Department as "Exhibit 16c" of ACCSC's 2020 Petition for Renewal). For the 2021 Fiscal Year (as of April 2021), ACCSC conducted 62 initial or renewal visits where the school had graduates prior to the visit (a branch campus may not have graduates that fall in the reporting period as defined by ACCSC in its first renewal of accreditation). Review of the results from those visits shows that an independent third party was able to verify that 88% of the students sampled were correctly listed as employed in field by the schools. (This 88% includes a category for students who are "Verified but Different" for employed students who may have different job titles and/or start dates of employment from that which was recorded initially.) 11% were classified as "Unable to Verify"; they may also have been employed in field but the independent third-party was unable to contact the graduate or the employer after multiple attempts or the verification required additional access to a third-party provider. In such instances, the school has an opportunity to provide additional information to the on-site evaluation team. As only 1% of the sample reported as "Verified as Not Correct" demonstrates, it appears that ACCSC member schools continue to be diligent about ongoing efforts to provide accurate employment statistics. Ex. M, at 13-14.

<sup>57</sup> ACCSC *Standards* (2019), Ch. 1 sec. III(B)(4), at 15. During 2016-2019, ACCSC conducted 125 regular unannounced on-site evaluations to schools. Final Staff Analysis (July 2021), at 69.



The purpose of the on-site evaluation is “to evaluate independently and to verify the information submitted by the school, the school’s success in meeting announced objectives and demonstrating successful student achievement, and the school’s compliance with the *Standards of Accreditation*.”<sup>58</sup> During the on-site visit, the school will be evaluated according to all available information, related to, among other topics, student achievement. This includes, among other information:

- Documentation included in the school’s reports, applications, responses, and any other information submitted to ACCSC required for the specific on-site evaluation;
- Information provided by the school to demonstrate compliance with accreditation standards;
- Interviews and surveys of the administration, instructors, other school employees, students, graduates, and employers of graduates;
- Observations of classes, management, and administration of the school; and
- Documentation of the student achievement data reported to ACCSC.<sup>59</sup>

The on-site evaluation team conducts a “file review” of a sample of student-level documentation to support the school’s reported graduation rate. This documentation includes student transcripts and documentation of graduation; documentation to support the school’s reported employment rate (including the school’s verifiable records) and initial employment of its graduates; and exam pass rate data obtained from the requiring entity.<sup>60</sup>

To confirm accurate employment data reporting, ACCSC’s on-site evaluation team reviews the results from the independent third-party verification process related to confirming student employment (discussed in the section below). During the on-site visit, institutions must be prepared to provide the on-site evaluation team with the detailed results from the independent third-party’s findings including a list of the students in the sample, the results for each student, and the reasons for those results.

The school must be able to justify the classification of each graduate as employed in a training related field and maintain verifiable employment records using ACCSC’s *Guidelines for Employment Classification* (Appendix VII, Substantive Standards, Standards of Accreditation).<sup>61</sup> During an on-site visit, the institution should be prepared to provide the records of initial employment that the institution relied upon to classify graduates as “employed-in-field.”<sup>62</sup> ACCSC requires institutions to verify that each

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<sup>58</sup> ACCSC Standards (2019), Ch. 1 sec. III, at 17.

<sup>59</sup> *Id.* at 28.

<sup>60</sup> *Blueprints for Success*: G&E Chart, at 9.

<sup>61</sup> ACCSC Standards (2019), App. VII, at 125. ACCSC promulgated its *Guidelines for Employment Classification* in 2011 and since that time has refined those guidelines in service of establishing clear expectations for institutional reporting of student achievement outcomes.

<sup>62</sup> In addition, evaluation teams conduct student surveys during each on-site evaluation. The student surveys provide important information about how students feel about processes and procedures, services, faculty, and educational resources. In addition, the surveys seek to determine how students feel about their overall decision to attend the school and if they would recommend the school to a friend. Average results for the period 2016 through 2020 show that 93% of the students felt good about their decision to attend the ACCSC-accredited school and 90% would recommend the

employment classification is directly related to the educational objectives of the program, aligns with a majority of the objectives of the program, is sustainable (*i.e.*, the employment lasts for a reasonable period of time), and is paid.<sup>63</sup>

The on-site evaluation teams use a detailed set of tools to support their evaluation of institutional information. Specifically, the *Team Leader Evaluation Form*, *Education Specialist Form*, *Occupation Specialist Evaluation Form*, and *Commission Representative On-site Evaluation Guide and Checklist* address a variety of metrics, including (as most relevant to student achievement):

- Review of the most recent student achievement outcomes in terms of retention/graduation and employment rates (Team Leader);
- Review of the preparation of student achievement data and determination as to whether rates of student graduation and graduate employment were reported accurately (Team Leader in consultation with the Commission Representative and the Education Specialist);
- Identification of any possible causes for below-benchmark student achievement rates in particular programs (Occupational Specialist);
- Review of whether the institution has identified any mitigating factors related to below-benchmark rates (Team Leader); and
- Many other aspects of a comprehensive evaluation that touch on student achievement as well as overall institutional compliance with ACCSC standards.<sup>64</sup>

As an example of detail on the forms, the *Commission Representative On-Site Evaluation Guide and Checklist* direct the representative to:

- Read the objectives of the program listed in the catalog. Scan the summary sheets. Pay particular attention to the following:

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school to a friend. In addition, those same average results show that more than 90% of respondents expressed satisfaction in every other area of the survey, with the exception of training and equipment which yielded an 88% satisfaction rate. *See* Ex. M, at 15.

<sup>63</sup> ACCSC *Standards* (2019), App. VII, at 125. If the institution can show diligent efforts have been made to secure written documentation without success, the institution can document verbal verification, provided it includes: (1) The graduate's and employer's name and contact information; (2) A signature of school staff attesting to verbal employment verification with the employer and the date of verification; and (3) A signature of school staff attesting to verbal employment verification with the graduate and the date of verification. In the case of self-employment, ACCSC requires institutions to maintain written verification that the employment is valid including, at a minimum, a statement signed by the graduate which includes the following: (1) The graduate's name and contact information; (2) An attestation that the self-employment is aligned with the individual's employment goals, is vocational, and is based on and related to the education and training received; (3) An attestation that the graduate is earning consistent training-related income; and (4) In cases where licensure is required for employment, an attestation that such licensure has been achieved. *Id.*

<sup>64</sup> *See Team Leader and Educational Specialist On-Site Checklist*, ACCSC (2020) (originally submitted to the Department as "Exhibit 15yy" of ACCSC's 2020 Renewal Petition); *Occupational Specialist On-Site Checklist* (2020) (originally submitted to the Department as "Exhibit 15ll" of ACCSC's 2020 Renewal Petition).

- Students that have a job title that does not appear to be employed in-field. For these students, the school's records have to justify that this employment is related to the training provided....
- Review each student's record to determine that written verification was obtained from the graduate or the employer. Take note of the following:
  - The placement is in-field and aligns with a majority of the objectives of the program listed in the catalog.
  - The job can be considered "sustainable" (*i.e.*, meaning that the graduate had the opportunity to maintain the employment for more than a short period).
  - The student held the position for a "reasonable" period of time before the school obtained verification....<sup>65</sup>

The school must be able to justify the classification of each graduate as employed in a training related field and maintain internal verifiable employment records using the *Guidelines for Employment Classification*. While the Commission's *Guidelines* are clear, employment classification is not an exact science.

In cases where the on-site evaluation team is unable to determine whether classifications are appropriate, the team's On-Site Evaluation Report will include a Team Finding with specific reference to applicable *Standards* and citation to the evidence that led to the team's conclusion that it could not verify compliance. A team finding is not an automatic determination of noncompliance or an indictment of fraud or misrepresentation; rather, it identifies areas where the team could not determine compliance. The school is provided with an opportunity to respond to the report and demonstrate compliance to the Commission. The On-Site Evaluation Report may include additional findings, recommendations for improvement, requests for information, and other inquiries. If the Commission has questions or finds an instance where a school may have misclassified the employment of a graduate as being in a training-related field, the Commission allows the school to justify its classification or to make corrections based on human error or misinterpretation by the school, graduate, or employer as to what "related" employment means.

#### **4. ACCSC Appropriately Evaluates and Monitors Student Achievement Employment Classifications**

The SDO opined that "there is not clear evidence that [ACCSC] monitors and evaluates whether ... 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."<sup>66</sup> Respectfully, ACCSC disagrees. ACCSC's response herein provides ample evidence that its monitoring and evaluation approaches are robust and more than adequate to hold institutions accountable to the *Guidelines for Employment Classification*. Moreover, as discussed above, the Colorado court's now-vacated findings in the CollegeAmerica-Denver matter are neither determinative nor demonstrative of shortcomings in ACCSC's application of its standards.

In requesting additional information about ACCSC's methods for evaluating and monitoring whether graduates should be listed as employed in the field in which they trained, the Department's October 27, 2021 letter cites to one On-Site Evaluation Report which does not expressly state that the evaluation team

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<sup>65</sup> *Commission Representative On-Site Checklist*, ACCSC (2020) ("Exhibit T").

<sup>66</sup> SDO Letter to ACCSC (Oct. 27, 2021).



reviewed institutional data to verify that graduates were employed-in-field. That this one On-Site Evaluation Report does not contain a finding is not indicative or demonstrative that ACCSC did not review the employment classifications and supporting documentation; it indicates only that there were no findings in this area. Given the breadth of information reviewed by on-site evaluation teams, On-Site Evaluation Reports do not always list each piece of information reviewed. Rather, they specifically reference only information reviewed that was a supplement to the already existing written record, (which includes documentation submitted in appendices to an institution’s self-evaluation report). On-site evaluation teams review that supplemental material, the school’s Self-Evaluation Report and appendices, and information provided in a school’s Annual Report. Applying its knowledge of ACCSC practices in this and other areas, Department Staff recognized ACCSC’s compliance with the *Criteria for Recognition*.

As the tools described above detail, every initial and renewal on-site evaluation includes direct consideration of precisely the issue raised in the October 27, 2021 letter. The Commission provides the following examples of approaches taken, such as On-Site Evaluation Reports and Commission action letters, with respect to employment-in-field classifications.

Exhibit	Type of Doc.	Employment-in-Field Consideration
U	May 19, 2017 Commission Action Letter	The Commission placed the school on Warning, with employment classification as an area of concern. Specifically, the Commission questioned whether placements such as “Park Ranger,” “Apprentice Welder” and “Sign Tech” from a welding program should be classified as employed-in-field.
V	May 14, 2019 On-Site Evaluation Report	The on-site evaluation team questioned whether Aviation Maintenance Technology program graduates placed as “Tire Tech,” “Welder,” and “Expediter” should be classified as employed-in-field.
W	Sept. 12, 2019 On-Site Evaluation Report	The on-site evaluation team questioned whether the school’s employment classification was appropriate and reasonable based on the educational objectives of the program. Specifically, the team questioned whether Medical Assisting (Diploma) program graduates placed as Phlebotomists should be classified employed-in-field based on the objectives of the program.
X	October 14, 2021 Deferral Letter	The on-site evaluation team questioned whether Pharmacy Technician program graduates placed as “Pharmacy Clerks” should be classified as employed-in-field.
Y	September 2018 Systemwide Probation Order	The Commission placed CEHE-affiliated schools on Probation, based in part on a finding that the three CEHE-affiliated schools failed to provide justifiable classifications of all graduates as employed-in-field based on the educational objectives of their programs. This Order represents, on a school-by-school basis, documentation of the Commission’s concerns, including, by way of example, questioning of whether CollegeAmerica properly classified Medical Specialties program graduates’ placements as Personal Care Providers, CNAs, Caregivers, Personal Living Assistants, and Home Health Clinical as employed-in-field based on the objectives of the program. The school subsequently removed those roles from the employed-in-field classification. <sup>67</sup>

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<sup>67</sup> Demonstrating the level of detail considered by ACCSC and its on-site evaluation teams with respect to their findings around employment classifications is the Team Summary Report discussion of Stevens-Henager College-Murray:

As these examples show, if the Commission finds a pattern of such misclassifications, then cause for concern regarding the reliability of the school's reported data does arise and concordant action follows.<sup>68</sup>

Although the Colorado court expressed its view that CollegeAmerica misreported the employment status of some graduates to ACCSC, the Colorado court does not have jurisdiction to make determinations as to whether a school is or is not in compliance with an accreditor's standards. However, ACCSC does agree with the trial court's recognition, in the vacated Colorado findings of fact and conclusions of law in the Colorado Attorney General case, that the accreditation process relies on some level of trust. The trial court findings acknowledged the reality that on-site evaluation teams have limited time to review voluminous documentation related to institutional operations, and that ACCSC's practice is to review a sample of the documentation provided, rather than every student file. The court commented:

*[I]t is impractical to expect that [ACCSC's on-site evaluation team] would necessarily discover all information relevant to their determinations among the documents of another entity, especially regarding violations of the Accreditation standards. Beyond the practical aspects, such a position strikes the court as fundamentally at odds with ACCSC's admonition, in its Standards of Accreditation that "[a] high level of reliance is placed upon information, data and statements provided to the commission by a school. The integrity and honesty of a school are fundamental and critical to the process," and its statement in the January 5, 2011 Accreditation Alert, that "[o]f*

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*SHC-Murray did not demonstrate that the published program objectives of the Medical Specialties (AOS) degree program align with the title, length, and credential of the program (Section II (A)(3)(c), Substantive Standards, Standards of Accreditation). The on-site evaluation team noted that 8 of the 58 graduates reported as "employed in field" on Graduation & Employment Charts submitted with the 2016 Annual Report were reported to be employed in positions such as Patient Service Representative, Phlebotomy Technician, and Certified Nursing Assistant. The school did not demonstrate how those employment classifications are appropriate and reasonable outcomes for graduates of an associate's degree program. Even if the published objectives of the Medical Specialties (AOS) program are accurate in that an individual with a "specialties" associate degree would be able to perform the generalized responsibilities of nursing assistants, the team questions if those objectives are appropriate in that the objectives align with the title, length, or credential of the Medical Specialties (AOS) program.*

Team Summary Report: Stevens-Henager (Murray) (Feb. 16, 2018) ("Exhibit Z"); see also Ex. Y ("In addition, it appears that Medical Specialties is a misnomer, since the emphasis appears to be on acquiring a multiplicity of skills, rather than a specialization. Due to the extent of the questions regarding this program, the Commission directs all CEHE-affiliated schools to cease enrollment in the Medical Specialties program until such time as the school is able to convincingly demonstrate that this program has been redesigned with appropriate curriculum that aligns to the educational and employment objectives and provides reliable and justifiable pathways for student success. Absent such evidence, the Commission will discontinue the approval of the Medical Specialties program for all CEHE-affiliated institutions"). Eventually, in February 2019, the school submitted and received approval of a non-substantive program modification renaming Medical Specialties to Medical Assisting and modifying the program to narrow the educational objectives and occupational objectives to the Medical Assisting occupation.

<sup>68</sup> In addition to the examples provided in the chart above, in the August 2020 trial court findings from the Colorado Attorney General action, the trial court discussed specific evidence of ACCSC engaging with CollegeAmerica in relation to its employment classifications. The court noted that an on-site evaluation team had questioned the school at one point after noting that backup documentation was missing. Ex. L, at 57. The court also stated that ACCSC, on more than one occasion, "conclusively determined that certain types of jobs were not employed in field for certain degree programs." *Id.*

*crucial importance is that the school is responsible for justifying, with documentation, every graduate classified as employed.”<sup>69</sup>*

Though ACCSC does analyze institutional data, ACCSC’s assigned and assumed roles do not include investigating data—including that already verified by independent, third-party industry professionals—at a comprehensive, forensic level. Accreditors simply do not have the investigatory tools or authority to do so; the regulatory triad accounts for this by including the state, which has access to such tools and power. In any event, ACCSC goes above the requirements of the federal regulations and has implemented a robust, holistic review of student achievement that includes consideration of data that has been independently tested.

The Colorado Court did get it right in its assessment that accreditation fundamentally requires trust. As such, it bears repeating: a school’s failure to meet the fundamental expectations and burden of the accreditor-institution compact—which the institution affirms and agrees to in applying for accreditation to ACCSC—is not evidence of the failure of an accreditor’s process. Schools alone are responsible for, and have the burden to demonstrate, compliance with accreditation standards.

In sum, ACCSC effectively applies monitoring and evaluation approaches that are designed to ensure that employment rates are verified; that graduates reported as employed are working in their related field; and that problems with employment classification are identified. Schools must support reported rates of student achievement through transcripts, verifiable records of initial employment, or other verifiable documentation. The on-site evaluation team lists concerns with employment classification in team findings. Schools are provided an opportunity to respond to the team finding and to either justify those placements as in the field or show that the school has corrected the issue. When receiving responses where employment classifications are not clearly in alignment with the program from which the student graduated, ACCSC requires additional information and documentation. This information is reviewed by the Commission and the Commission may accept, defer, place the school on employment verification reporting, or take other appropriate action.

#### **D. ACCSC Action to Address Institutional and Programmatic Compliance Concerns Complies with 34 C.F.R. §§ 602.19(b) and 602.20(a)**

The Department’s October 27, 2021 letter requests, with reference to 34 C.F.R. § 602.20(a) “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.”<sup>70</sup> As a preliminary matter, however, the Commission clarifies that the letter conflates placement on “Warning” with an “enforcement action” correlating to a finding of noncompliance.

To explain, the effective evaluation and monitoring approaches described above assess both whether institutions are following ACCSC’s substantive accreditation standards *and* whether institutions may be at risk of falling into noncompliance. Where institutions may be at risk of noncompliance, ACCSC may impose additional monitoring measures.<sup>71</sup> These include Heightened Monitoring; Outcomes Reporting;

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<sup>69</sup> *Id.* at 56 (internal references to trial court exhibits and transcript omitted).

<sup>70</sup> Letter from SDO to ACCSC (Oct. 27, 2021), at 6.

<sup>71</sup> Again, the Commission establishes benchmark rates to guide an assessment of whether rates are “acceptable” but “consider[s] not only the rates . . . but also other factors that are reasonably related to student achievement.” ACCSC



other forms of additional, situation-specific monitoring such as Litigation Reporting where an institution is involved in litigation or third-party regulatory action; and Warnings. Such actions are **not** enforcement actions under 34 C.F.R. § 602.20(a). Instead, they are ongoing monitoring mechanisms (in accordance with 34 C.F.R. 602.19(b)) imposed **prior** to a determination of noncompliance—applying an approach above-and-beyond what is required by 34 C.F.R. § 602.20(a)’s enforcement provision.

The Commission believes that teasing out this nuance is necessary to fully respond to the request regarding evidence of ACCSC’s enforcement of standards under 34 C.F.R. § 602.20(a), particularly considering the October 27, 2021 letter’s requests for evidence of:

- “[H]ow long an institution or program has to demonstrate compliance in the case of student achievement before losing programmatic or institutional approval” 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.”

In addition, the letter comments, “It appears ... 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.”<sup>72</sup>

As suggested by the request in the October 27, 2021 letter, though, the maximum timeframe is triggered upon a **determinative finding** of noncompliance, not while the Commission is engaged in fact-finding, monitoring, requiring improvement plans, and assessing compliance. Where such noncompliance has been identified, the Commission appropriately takes enforcement action (generally, placing the institution on Probation) and requires the institution to remedy its noncompliance within the timeframe established by ACCSC policy and 34 C.F.R. § 602.20(a). Failure to remedy noncompliance within that timeframe necessitates an adverse action.<sup>73</sup>

The Department expressly considered this approach in 2016, when it submitted questions to ACCSC regarding compliance with §§ 602.10(b) and 602.20(a). In response, ACCSC explained its inclusion of an added Outcomes Monitoring layer “to prompt an institution’s attention to the examination of its outcomes before the Commission takes other action that curtails institutional operations based on low student achievement outcomes.” ACCSC also confirmed that the maximum timeframe clock will begin, usually after an unsuccessful Outcomes Monitoring period, “on the date that the Commission first informs a school that a finding of noncompliance has been made but will not begin during a period of time when the Commission is still in a fact-finding process.”<sup>74</sup> This historical approval of ACCSC’s monitoring and

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*Standards* (2019), Ch. 2 sec. VII, Part B(1)), at 104. As such, an institution with a program that falls below benchmark rates is **not** automatically considered to be out-of-compliance with an accreditation standard; rather, that program will be required “to submit to heightened monitoring or reporting of student achievement outcomes as directed or take other action as deemed appropriate unless the school can otherwise demonstrate successful student achievement.” *Id.*

<sup>72</sup> Letter from SDO to ACCSC (Oct. 27, 2021), at 6.

<sup>73</sup> Adverse action is defined by the Commission as denial of an application for initial accreditation, withdrawal of accreditation, and denial of a substantive change application. *ACCSC Standards* (2019), Ch. 1 sec. I, at 4.

<sup>74</sup> ACCSC’s Response to the Department’s Mar. 2, 2016 Request for Information (Apr. 15, 2016) (“Exhibit AA”), at 55.

enforcement actions and framework for taking them aligns with the approach previously reviewed by the Department as part of its evaluation of the Commission's responsibilities under § 602.20(a).<sup>75</sup>

In sum, it is inaccurate to (1) portray a failure to meet benchmark rates as noncompliance with the Commission's student achievement standards; (2) apply the regulatory timeline in § 602.20(a) to monitoring requirements imposed *prior* to any finding of noncompliance; and (3) review Heightened Monitoring, Outcomes Reporting, Warning, and Probation as equivalent or similar to a finding of noncompliance. To address the request in the Department's October 27, 2021 letter around Commission actions related to Warning and similar actions, the Commission describes separately below its approach to such additional monitoring measures, as well as to situations in which the Commission finds noncompliance. For the reasons that follow, the Commission's approach complies with 34 C.F.R. §§ 602.19(b) (monitoring action) and 602.20(a) (enforcement action).

#### **1. Monitoring Actions Taken in Response to Questions Regarding Compliance with Student Achievement Standards, Absent A Finding of Noncompliance (34 C.F.R. § 602.19(b))**

Heightened Monitoring and Outcomes Reporting are meant to monitor the school's program improvement efforts to ensure the school has strategies in place to support successful compliance with ACCSC's student achievement standards, among other ACCSC *Standards*. This includes strategies to support graduation and graduate employment, such that benchmark rates are achievable.

Each year, the Commission requires every school to submit an Annual Report in accordance with established formats and timelines.<sup>76</sup> Heightened Monitoring provides an added level of review for a school's Annual Report. In addition, during routine accreditation reviews or at any other time the Commission believes appropriate, the Commission may place a school in a reporting status and direct the school to submit certain information (*e.g.*, an Outcomes Report) regarding its compliance with accreditation requirements.<sup>77</sup> Institutions subject to these additional measures are provided with opportunities to respond to initial questions regarding potential noncompliance.<sup>78</sup> Of note, Heightened Monitoring brings fewer

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<sup>75</sup> This interpretation of § 602.20(a) is long-standing, and ACCSC is not alone in imposing such additional monitoring measures outside the maximum timeframe when it has concerns of potential noncompliance but has not yet reached a finding. These suspicions may arise, for example, where a program's or group of programs' graduation or employment rates fall below benchmarks. As discussed above, the Commission's *Substantive Standards* include a requirement that "[t]he school demonstrate[] successful student achievement by maintaining acceptable rates of student graduation and employment in the career field for which the school provided education as well as acceptable pass rates on licensure/certification exams where required by governmental entities to work in a particular career field." ACCSC *Standards* (2019), Ch. 2 sec. VII(B), at 104-105. The maximum timeframe is not triggered by a program's failure to meet a benchmark rate or by imposition of additional monitoring measures. However, where the Commission determines that a school is not complying with student achievement standards, ACCSC will take institutional action (*e.g.*, Probation). Such action *does* conform to the timeframe set for in § 602.20(a), because it occurs in response to a *determination* of noncompliance.

<sup>76</sup> ACCSC *Standards* (2019), Ch. 1 sec. V(B)(1), at 105-106.

<sup>77</sup> ACCSC *Standards* (2019), Ch. 1 sec. V(D)(1), at 106.

<sup>78</sup> Initially, the Commission will request new G&E Charts and a description of the factors impacting successful student achievement, a description of the strategies implemented to overcome those factors, and an analysis and assessment

restrictions than those provided for schools in a reporting status but allows for additional review beyond the Annual Report requirement.<sup>79</sup>

The parameters of Heightened Monitoring and Outcomes Reporting, including the length of the monitoring period and process for determinations of compliance, are based on several factors. Either monitoring approach may be imposed as appropriate by the Commission where a program's graduation, employment, or licensure/certification pass rates fall below benchmark. During Heightened Monitoring, Commission staff will review a school's Annual Report and may request additional or updated information. If the school demonstrates that it meets benchmarks, staff may remove it from Heightened Monitoring or, if not, staff may forward the matter to the Commission's progress committee for further consideration of possibly recommending that the Commission to place the school in reporting status. Typically, Heightened Monitoring is not continued, but, rather, is either (a) accepted and removed or (b) the Commission will impose a reporting status (*e.g.*, Outcomes Reporting) on an institution which fails to meet benchmarks under Heightened Monitoring. Factors relevant to Outcomes Reporting include the length of the program, the severity of the below-benchmark performance, the effectiveness of the school's strategies in increasing/or not increasing rates of student achievement, the number of programs reporting below benchmark outcomes, and exogenous factors impinging on the school's rates of student achievement. As such, there is no set timeframe for a program to be in a monitoring phase.

Significantly, an *institution* may remain on Outcomes Reporting for what appears to be an extended period because different individual *programs* within the institution may be experiencing various levels of student achievement success and challenges. ACCSC is not a programmatic accreditor, but instead an institutional accreditor that monitors individual program performance relative to a set of established benchmarks. Often, when a school is continued on monitoring or reporting, the original program that sparked the status by not meeting a benchmark may subsequently meet that benchmark, but another program falls newly below its benchmark; or the program meets the benchmark that sparked the status (*e.g.*, graduation rate) but drops newly below another benchmark (*e.g.*, employment-in-field rate).<sup>80</sup> In such a situation, the Commission—which does not label Outcomes Reporting at the program level or specific to graduation versus employment rate—continues the school on reporting at the institutional level. Moreover, a six-month non-degree program will likely have a much shorter monitoring time frame than a four-year

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of the effectiveness of the school's efforts (or "Assessment of Strategies"). In any subsequent action where the Commission votes to place the school on Warning, cease program enrollment, or continue a school on Reporting, the school may provide: new G&E Charts, an Assessment of Strategies, and, in the Commission's discretion, a program advisory committee review and comment on student achievement and a trend analysis. Further actions may require items such as a retention study, admissions study (for programs with low graduation rates), viability study, and program assessment/assessment of educational resources/assessment of student services (or any combination of these three).

<sup>79</sup> ACCSC *Standards* (2019), Ch. 1 sec. VII(I)(1), at 105-106.

<sup>80</sup> As an example, *see* Ex. X, which shows a school placed on reporting for below-benchmark graduation rates in two programs, Vocational Nurse and Medical Insurance Biller and Coder. The school was continued on reporting but those two programs ultimately met benchmark for graduation; however, they then fell below benchmark for employment and the Commission identified other programs that newly fell below benchmark. *Id.* Therefore, it might seem the outcomes report starting in August 2018 and continued at the February 2021 meeting has been pending for over two years; however, the original issue of graduation rates in the Vocational Nurse and Medical Insurance Biller and Coder programs is resolved—the institution did improve and met those benchmarks.



baccalaureate degree program in order to allow additional time for the longer program to demonstrate improvement in relevant cohorts.<sup>81</sup> In sum, these monitoring and reporting measures turn on a variety of circumstances, and while a school may be on monitoring or reporting for a period of time, that reporting may not always be for the same program or for the same previously below-benchmark outcome. The Commission does not rely on a set period because the factors contributing to the reporting, program parameters, and severity of issues may fluctuate.

ACCSC has had largely these same systems in place for the last 15+ years, and these procedures have been approved by the Department every five years during the recognition process. Again, they were expressly considered by the Department in 2016 in relation to §§ 602.10(b) and 602.20(a) during ACCSC's then-pending renewal petition.<sup>82</sup> This process, which has not fundamentally changed, was accepted by the Department's Office of the Under Secretary, Department Staff, the Senior Department Office, and NACIQI in 2016.

## **2. Enforcement Action in Response to a Finding of Noncompliance with Student Achievement Standards (34 C.F.R. § 602.20(b))**

Once the Commission makes a determination of noncompliance with its student achievement (or other) standards, then the Commission's maximum timeframe to remedy noncompliance is engaged. Where the Commission has made a determinative finding of noncompliance with a standard, the period allotted to the school to remedy the noncompliance, or cure the deficiency, together with the time for the Commission's

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<sup>81</sup> ACCSC's reporting period formula is designed to: (a) provide a consistent framework for reporting outcomes across an array of different programs with varying lengths and objectives; (b) report on individual students within defined cohorts—students who start in the same program at the same time; (c) obtain data for a 1-year period based on an established and consistent formula; (d) allow for students to complete the program within 1.5 times the program length; and (e) allow minimally 3 months for graduates to find employment after graduation.

For a six-month program, the reporting period is based on a one-year period occurring one-year prior to the report date; an 18-month program must report on a one-year period ending 30 months prior to the report date and a 48-month program must report on a one-year period ending 63 months prior to the report date. In other words, when considering a July 2021 report date:

- A six-month program would report on students who started during the period *July 2019 through June 2020*, with the formula being:
  - $6 \text{ [program length]} \times 1.5 \text{ [time and } \frac{1}{2} \text{ to complete]} + 3 \text{ [minimal time to find employment]} = 12 \text{ months}$ ; count back 12 months from the report date to find the *end* of the reporting period; count back another 12 months to find the *beginning* of the reporting period;
- An 18-month program would report on students who started during the period *January 2018 through December 2018*, with the formula being:
  - $18 \times 1.5 + 3 = 30 \text{ months}$ ; count back 30 months from the report date to find the *end* of the reporting period; count back another 12 months to find the *beginning* of the reporting period; and
- A 48-month program would report on students who started during the period *April 2014 through March 2015*, with the formula being:
  - $48 \times 1.5 + 3 = 63 \text{ months}$ ; count back 63 months from the report date to find the *end* of the reporting period; count back another 12 months to find the *beginning* of the reporting period.

Ex. Q, at 13-15. In each scenario, the school would report all cohorts of students who start in the program within the Reporting Period window and track each student's individual progression through the program to graduation and initial employment. *Id.*

<sup>82</sup> Ex. AA, at 35-36.

final decision, will not exceed the following time limits unless there is good cause to extend the period for achieving compliance under the regulations in effect at the time ACCSC submitted its Renewal Petition:

- 12 months, if the school's longest program is less than one year in length;
- 18 months, if the school's longest program is at least 1 year, but less than two years in length; or
- 2 years, if the school's longest program is at least 2 years in length.<sup>83</sup>

This provision, which was in effect during the timeframe of ACCSC's recognition period, clearly aligns with the requirements of 34 C.F.R. § 602.20(a). The Commission has the discretion to impose a shorter timeframe where appropriate. Where the institution does not come into compliance with the standard(s) at issue within the timeframe allotted, "the Commission will take adverse action" against the institution.<sup>84</sup> In all instances, before taking a withdrawal of accreditation action and in accordance with due process requirements, the Commission provides written notice to the school of the compliance deficiency and provides an opportunity for the school to respond in writing.

### **III. ACCSC Applied Its Evaluation, Monitoring, and Enforcement Mechanisms in Relation to CEHE-Affiliated Schools**

As with its other institutions, and as previously reviewed and acknowledged by the Department on several occasions, ACCSC has a long history of evaluating, monitoring, and enforcing its substantive standards—including those related to student achievement—and the CEHE-affiliated schools were no exception.

First, as already noted, ACCSC did not, and could not, accredit CEHE—a corporate entity that is not an educational institution. It is also worthwhile to note that while some programs at CEHE-affiliated schools experienced student achievement challenges, many programs were successful and regularly met benchmarks. Yet, when concerns arose, ACCSC did what it is duty-bound to do under its policies and federal regulations: it assessed compliance with its standards. As part of this process, ACCSC provided the CEHE-affiliated schools with an opportunity to respond to student achievement and other concerns and to take corrective action. ACCSC must follow its processes for determining noncompliance with, and enforcing, its standards. If ACCSC were to rely on inconclusive information from courts or agencies without following its policies and procedures (which the Department has approved), it would violate federal regulations.

Second, as part of its evaluation and monitoring practices, ACCSC required that CEHE-affiliated schools:

- Provide reports that included annual student achievement outcomes for all academic programs;

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<sup>83</sup> Again, the timeframes allotted under 34 C.F.R. § 602.20(a) changed, effective July 1, 2020. ACCSC's current standards align with the current version of the regulation. The current timelines state that "the period allotted to the school to remedy the noncompliance or cure the deficiency, together with the time for the Commission's final decision, will not exceed the lesser of 150% of the length of the longest program offered at the school or three years unless there is good cause to extend the period for achieving compliance." *See* ACCSC Standards (2019), Ch. 1 sec. VII(M), at 54.

<sup>84</sup> *Id.* at 55.

- Respond to Outcomes Reporting and Heightened Monitoring for institutions with programs that had below-benchmark student achievement outcomes;
- Submit detailed self-evaluation reports in order to be considered for continued accreditation;
- Submit additional evidence of compliance following ACCSC deferral of decision regarding continued accreditation;
- Participate in accreditation workshops;
- Provide detailed responses and/or reporting related to complaints, charges, litigation allegations, and other claims made about the institutions or their programs;
- Participate in on-site renewal of accreditation and substantive change evaluation visits (as well as unannounced visits to some institutions by ACCSC personnel);
- Cease or cap enrollment in underperforming programs; and
- Develop teach-out plans and enter into teach-out agreements in connection with program and institutional closure.<sup>85</sup>

Third, in accordance with federal regulations, when ACCSC determined there was system-wide or campus-specific noncompliance with ACCSC standards, ACCSC utilized enforcement mechanisms that directed the schools to come into compliance with its standards. Namely, **during ACCSC's current recognition cycle, it issued orders to CollegeAmerica institutions and CEHE-affiliated schools, system-wide, to take aggressive action to correct course.**<sup>86</sup> Moreover, as discussed below, these enforcement mechanisms adhered to the timeframe permitted for an institution to come into compliance per 34 C.F.R. § 602.20.

Notably, ACCSC's practices with respect to CEHE-affiliated schools were repeatedly reviewed by Department Staff. Most recently in 2018 and as noted above, ACCSC responded to broad Department inquiries regarding ACCSC's actions related to CollegeAmerica schools. In addition, ACCSC informed the Department of its issuance of a system-wide Probation order to CEHE-affiliated schools, as it did each time it took similar action against a school through Department reporting mechanisms and ongoing communications.

Importantly, and even assuming for purposes of argument that CEHE-affiliated schools were attempting to falsify employment data, these attempts were not particularly fruitful. Through ACCSC's practices related to employment data (which include third-party verification), several CEHE-affiliated schools' programs were identified as below benchmarks, resulting in monitoring and responsive action by ACCSC. As indicated in ACCSC's supporting documentation, ACCSC addressed those below-benchmark

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<sup>85</sup> Letter from ACCSC to CEHE, "Systemwide Show-Cause Order" (July 12, 2013) (originally submitted to the Department in 2016 as part of the Appendix to ACCSC's CEHE Summary) (attached hereto as "Exhibit AB"); Letter from ACCSC to Independence University (Nov. 14, 2014) (originally submitted to the Department in 2016 as part of the Appendix to ACCSC's CEHE Summary) (attached hereto as "Exhibit AC"); Ex. B; Ex. Y; ACCSC Public Notice of Withdrawal of Accreditation for Independence Univ. and Stevens-Henager College (Murray and Boise) (Apr. 22, 2021) ("Exhibit AD").

<sup>86</sup> Ex. E; Ex. Y; Ex. AD.



programs individually with the institutions, resulting in some programs rising above benchmarks, some having their enrollment capped, and some being discontinued.

Further, while some may argue that accreditors should withdraw accreditation immediately upon any question of potential noncompliance with accrediting agency standards, doing so would violate regulatory requirements. This argument ignores the reality that the due process mandated per regulation requires time—time to allow schools to respond to concerns; time to implement improvement (and, in the area of student achievement, to gather data on students who have experienced those improvements throughout their programs); time to prepare and consider detailed voluminous responses; and time to implement accretor action while balancing and mitigating potential negative impact on students. Indeed, as noted earlier, an SDO determination of noncompliance with the *Criteria for Recognition* is but one consequence that accreditors face when an institution believes, even mistakenly, that its accretor failed to abide by the accretor’s standards and provide meaningful due process.<sup>87</sup>

Furthermore, to the extent that the SDO’s letter asks “whether ACCSC should have discovered CEHE’s fraudulent practices under their own accreditation and monitoring protocols,” it bears repeating that (a) ACCSC is not an investigatory agency, and (b) there has been no finding by any agency to ACCSC’s knowledge—despite the Colorado Attorney General’s years-long inquiry—that CEHE or its affiliated schools engaged in “fraud.” To ACCSC’s knowledge, despite the suggestion by some at the NACIQI meeting that CEHE and its affiliated schools engaged in blatant, unmistakable violations of law and regulation, no other regulatory or oversight agency revoked approval of CEHE-affiliated schools for such conduct or succeeded in impactful litigation. ACCSC was the first to take an adverse action; appropriately, that action was based on failure to demonstrate compliance with ACCSC’s student achievement accreditation standards.

Moreover, to the extent that the SDO is asking why ACCSC did not take a different course of action to revoke accreditation of CEHE-affiliated schools sooner, this analysis disregards the discretion that ACCSC should be permitted as an accrediting agency. It would be inappropriate to effectively reverse ACCSC’s decisions in this matter through the lens of hindsight, particularly without the benefit of having participated in ACCSC’s extensive review process, or, at a minimum, without a comprehensive review of the complete and extensive record in this matter. Based on its experience, ACCSC considered the evidence before it; assessed appropriate timelines for addressing questions; carefully evaluated the schools’ responses through responsive submissions and on-site visits; and, as determined in its judgment based on the evidence and its standards, determined compliance or noncompliance and imposed maximum timeframes for remedying any noncompliance. These actions align with the regulatory charge given to institutional accreditors.<sup>88</sup>

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<sup>87</sup> See, e.g., *Independence University v. Accrediting Commission of Career Schools and Colleges (ACCSC)*, AAA Case No. 01-21-0017-0169 (filed Oct. 21, 2021). Independence University, Stevens-Henager College (Murray), and Stevens-Henager College (Boise) submitted a notice of intent to arbitrate the September 17, 2021 Appeals Panel Decision affirming the withdrawal of their accreditation due to failure to resolve student achievement issues. The arbitration is ongoing.

<sup>88</sup> Courts have been clear that an accrediting agency’s interpretation of its own rules should be given deference. ACCSC must be permitted to exercise discretion in implementing its own policies and procedures. As written by a Michigan district court and affirmed by the U.S. Court of Appeals for the Sixth Circuit, “Accrediting procedures are guides that, if construed ... too strictly, would strip the accrediting bodies of the discretion they need to assess the unique circumstances presented by different schools.” *Found. for Interior Design Educ. Research v. Savannah Coll. Of Art & Design*, 39 F. Supp. 2d 889, 896-97 (W.D. Mich. 1998), *aff’d*, 244 F.3d 521 (6th Cir. 2001) (citing *Med.*

Through application of its longstanding *Standards of Accreditation* and processes, which have been repeatedly determined to adhere to Department requirements, ACCSC addressed evolving considerations related to CEHE-affiliated schools as they arose. In response to the SDO's request, this is further discussed in the section that follows which specifically addresses: ACCSC's practices related to Independence University and ACCSC's adherence to its own written standards and federal regulations in monitoring and responding to "the institution's long-term compliance issues"; and how ACCSC's actions followed enforcement timeframes under 34 C.F.R. § 602.20.

**A. As Recognized by the Department, ACCSC's Evaluation, Monitoring, and Enforcement Mechanisms Appropriately and Effectively Addressed Independence University<sup>89</sup>**

With respect to Independence University and Stevens-Henager College Ogden/West Haven, as illustrated in more detail in the subsection below ACCSC adhered to regulatory and ACCSC requirements in monitoring and responding to compliance considerations, including with respect to 34 C.F.R. §§ 602.16(a)(1)(i), 602.19(b), and 602.20. ACCSC applied the monitoring and evaluation processes described above to *all* CEHE-affiliated schools—including Independence University and Stevens-Henager College Ogden/West Haven—through renewal processes, annual reports, and, as indicated, interim on-site visits and monitoring/reporting. Again, it is important to note that the review process for Independence University and Stevens-Henager College Ogden/West Haven was unique to those institutions to include determinations of noncompliance for Independence University and the concordant maximum timeframe allowed to remedy that noncompliance.

In reviewing the cited correspondence, reports, and orders supporting this response, the Department will note the extensive information, analysis, and factors that ACCSC expressly considered regarding each CEHE-affiliated school and the issues impacting those schools, individually. This detail reflects ACCSC's commitment to its standards, policies, procedures, and due process obligations—as well as to ACCSC's regulatory obligations.

First, as discussed above, in connection with ACCSC's 2016 reauthorization process, both NACIQI and the Department considered whether ACCSC was acting in compliance with its obligations. Information regarding ACCSC's approach to the CEHE-affiliated schools (including Independence University and Stevens-Henager College Ogden/West Haven) is in the record related to that process. In reauthorizing ACCSC, the Department and NACIQI articulated that ACCSC was in compliance with regulatory requirements, and that its approach to the CEHE-affiliated schools was appropriate. Although engagement

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*Inst. of Minnesota v. Nat'l Ass'n of Trade & Tech. Sch.*, 817 F.2d 1310, 1314 (8th Cir. 1987); *Rockland Inst., Div. of Amistad Vocational Sch., Inc. v. Ass'n of Indep. Colleges & Sch.*, 412 F. Supp. 1015, 1018 (C.D. Cal. 1976); *Parsons Coll. v. N. Cent. Ass'n of Colleges & Secondary Sch.*, 271 F. Supp. 65, 73 (N.D. Ill. 1967)). "ACCSC must maintain a balance between specificity, to provide notice to those seeking accreditation, and generality, to allow itself flexibility in accrediting varied institutions ranging over many different fields and disciplines." *Pro. Massage Training Ctr., Inc. v. Accreditation All. of Career Sch. & Colleges*, 781 F.3d 161, 174 (4th Cir. 2015) (citing *Ambrose v. New England Ass'n of Schs. & Colls., Inc.*, 252 F.3d 488, 495 (1st Cir. 2001); *Med. Inst. of Minn.*, 817 F.2d at 1314).

<sup>89</sup> Independence University was initially a branch of Stevens-Henager College Ogden/West Haven. In October 2020, Independence University and Stevens-Henager College Ogden/West Haven consolidated into one institution. Independence University (to include Stevens-Henager College Ogden/West Haven) was the sole CEHE-affiliated school not in full teach-out at the time CEHE announced closure. This portion of ACCSC's response discusses both institutions.

with CEHE-affiliated schools goes back nearly ten years, given the assertions during the NACIQI meeting of “years of noncompliance,” and due to the complexity of the review process necessary to assess compliance across multiple affiliated institutions addressing program-, institutional-, and system-level considerations, these details matter and are worth an overview.

More specifically, as previously considered by the Department as part of ACCSC’s 2016 recognition renewal, the Department directly evaluated the 2012 accreditation renewal processes for Independence University and Stevens-Henager College Ogden/West Haven. In November 2012, ACCSC deferred action on the school’s renewal applications pending requests for further information on: (1) Independence University’s compliance with state authorization regulations; and (2) Stevens-Henager College Ogden/West Haven’s student achievement.<sup>90</sup> ACCSC conducted on-site visits at both schools related to substantive change applications, considering overall compliance with ACCSC standards; gave the institutions an opportunity to address various considerations; and requested extensive additional information. In June 2013, ACCSC provided a CEHE System-Wide Show-Cause Order, through which it was monitoring any programs not meeting student achievement benchmarks<sup>91</sup>; in November 2013, ACCSC determined that the CEHE-affiliated schools had produced evidence of ongoing compliance and lifted the order. At its November 2013 meeting, the Commission continued Independence University on a Show Cause Order due to questions related to refunds, student achievement outcomes, and state authorization; ACCSC vacated the order in November 2014, having previously found that Independence University provided evidence of compliance.<sup>92</sup> In November 2013 and May 2014, ACCSC determined that Stevens-Henager College Ogden/West Haven and Independence University, respectively, had provided evidence of compliance and renewed accreditation for four years, effective as of 2012. Renewal was granted with stipulations and Outcomes Reporting on (1) *one* program at each school which was then-below benchmarks and, (2), for Stevens-Henager College Ogden/West Haven, on efforts to promote student loan repayment.<sup>93</sup>

As the Department also considered at the time of ACCSC’s 2016 recognition renewal, ACCSC continued to follow its standards and procedures with the schools. It collected annual and outcomes reports and monitored the CEHE-affiliated schools system-wide through ongoing advertising and litigation reporting. In June 2015, the Commission accepted Independence University’s Outcomes Report, finding that the *one* program that had not been meeting benchmarks had done so. In November 2015, the Commission accepted Stevens-Henager College Ogden/West Haven’s Outcomes Report with stipulations around employment classifications.<sup>94</sup>

In 2016, both Independence University and Stevens-Henager College Ogden/West Haven submitted applications for renewal of accreditation. As indicated in the student achievement benchmark reporting

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<sup>90</sup> Ex. B, at 3.

<sup>91</sup> Ex. AB.

<sup>92</sup> Ex. AC.

<sup>93</sup> Again, ACCSC notes that placement on Litigation Reporting, Outcomes Monitoring, Warning, or Probation alone does not correlate to a finding of noncompliance with respect to student achievement under ACCSC standards and procedures. Rather, ACCSC will make a formal determination of noncompliance after providing an institution with appropriate due process.

<sup>94</sup> Ex. AD.



chart provided in the April 2021 Public Notice of Withdrawal of Independence University's accreditation, as of even 2017, many Independence University programs operational in 2021 were reported as meeting benchmarks or had not been in operation long enough to be reporting benchmark data, though some were below benchmarks.<sup>95</sup>

ACCSC conducted on-site evaluations at both schools in connection with the schools' renewal applications. The February 2018 On-Site Evaluation Report for each school raised questions regarding various student achievement issues (*e.g.*, meeting benchmarks, treatment of transfer students in data, data provided); for Stevens-Henager College Ogden/West Haven, the On-Site Evaluation Report also questioned discrete employment classification, admissions, and international student refund considerations.

As noted in the September 2018 CEHE system-wide Probation Order, after considering each school's response, the issues cited in their On-Site Evaluation Reports factored into the Commission's decision to place all CEHE-affiliated schools on system-wide Probation. It was at this point that ACCSC determined noncompliance, and the maximum timeframe began to run. Following substantial submissions by Independence University and Stevens-Henager College Ogden/West Haven, ACCSC provided an extension to the maximum timeframe after finding good cause to do so—the schools had shown potential for improvement through a robust set of initiatives. However, downward trends continued in student success benchmarks and other compliance areas. ACCSC concluded that Independence University (the one active, ongoing CEHE-affiliated school remaining after consolidating with Stevens-Henager College Ogden/West Haven) was not capable of achieving compliance within even the extended timeframe. Accordingly, ACCSC voted to withdraw accreditation in February 2021, effective April 2021, before the applicable maximum timeframe expired.<sup>96</sup> ACCSC's adherence to maximum timeframe requirements and the progression of compliance considerations related to Independence University and Stevens-Henager College Ogden/West Haven is provided below.

As an additional point, the SDO's letter states that the SDO found the timing of CEHE's announcement that the remaining CEHE-affiliated schools<sup>97</sup> would close—which occurred on the last day of the July 2021 NACIQI meeting—to be “troubling.”<sup>98</sup> While ACCSC cannot assume which aspects of the closure the SDO found troubling, ACCSC agrees that the closure and its abrupt timing are indeed troubling. To be clear, ACCSC had no advance notice or indication of this closure, which unfolded swiftly after May 2021. Notably, in the May 2021 teach-out plans submitted to ACCSC, Independence University and the other institutions in teach-out indicated the schools had the resources to complete the education of the students enrolled in the programs at the remaining locations by approximately March 2024. Independence University submitted two Teach-out Agreements in July 2021 and, on July 23, 2021, ACCSC directed all other remaining schools to submit Teach-out Agreements by August 2, 2021. Subsequently, on August 2, 2021, CEHE requested and ACCSC granted a “one day extension” of time to August 3, 2021 to respond to ACCSC's July 23, 2021 letter. However, ACCSC had become aware that CEHE abruptly closed all of its

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<sup>95</sup> *Id.* at 7.

<sup>96</sup> *Id.*; Ex. Y.

<sup>97</sup> At the time of closure, the remaining schools were Independence University—then-consolidated with Stevens-Henager College Ogden/West Haven—and five other schools that remained operational for purposes of teach-out alone.

<sup>98</sup> Letter from SDO to ACCSC (Oct. 27, 2021).

remaining campuses on August 1, 2021, **without advance notice** to ACCSC and prior to even receiving the decision of the ACCSC Appeals Panel related to the withdrawal of its accreditation.<sup>99</sup>

To the questions at hand, ACCSC complied with federal requirements and took appropriate action, as warranted, when it determined Independence University or Stevens-Henager College Ogden/West Haven was not in noncompliance with ACCSC *Standards*.

#### **B. ACCSC Implemented Maximum Timeframe Requirements as Required by 34 C.F.R. § 602.20 and ACCSC Standards as to CEHE-Affiliated Schools**

In matters concerning CEHE-affiliated schools, ACCSC complied with the maximum timeframe requirements laid out in its *Standards*, which echo the requirements of 34 C.F.R. § 602.20. In the Appendix at the end of and incorporated in this narrative response, we provide timeline graphics demonstrating the points at which ACCSC determined during the recognition period that evidence gathered through monitoring and enforcement indicated that a CEHE-affiliated school was out of compliance with Commission *Standards*.<sup>100</sup> At those points, the maximum timeframe requirements discussed above began to run.

As the timeline graphics show, in each case and within the maximum timeframe, each of the CEHE-affiliated schools resolved the determined noncompliance, closed, or was subject to adverse action by

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<sup>99</sup> Therefore, ACCSC directed the schools to submit an official closure notice with the effective date of closure as applicable for the remaining campuses and an update on their teach-out agreements/plans, including various information. In granting the request for a one-day extension, the Commission stated: “If CEHE does not submit a closure notice with effective date by close of business on August 3, 2021, ACCSC will consider all of the ... schools closed effective August 1, 2021.” On August 3, 2021, CEHE submitted closure notices to ACCSC for the remaining campuses, effective August 1, 2021. It is particularly troubling to ACCSC that the May 2021 teach-out plans indicated, with regard to the expected final school cessation of training date, “The actual cessation date depends more on the outcome of the appeal of the withdrawal of accreditation and whether we will be allowed to teach out these students”—and then the school closed before receiving the Appeals Panel decision. On September 17, 2021, ACCSC provided notice that the ACCSC Appeals Panel affirmed the Commission’s decision to withdraw the accreditation of Independence University. On September 27, 2021 Independence University submitted its Notice of Intent to Arbitrate the Appeals Panel Decision.

<sup>100</sup> As indicated in the timeline graphics, these determinations were memorialized in communications to single schools, or as part of CEHE-system-wide communications. Starting with 2016 (the year of ACCSC’s last reauthorization), the timeline graphics show all Warning and Probation status designations for the CEHE-affiliated schools, and designate determinations of noncompliance. (None of the CEHE-schools was under a determination of noncompliance at the start of the recognition period.) The timeline graphics summarize information provided in various exhibits to this response.

CollegeAmerica-Denver and its branches are the only CEHE-affiliated schools that were subject to individual-school ACCSC Warning/Probation orders or determinations of noncompliance during the recognition period; the remainder of the CEHE-affiliated schools were subject only to CEHE system-wide orders or determinations (to which CollegeAmerica-Denver was also subject). Accordingly, we have submitted one timeline reflecting the individual CollegeAmerica-Denver orders or determinations, and another timeline reflecting system-wide orders and determinations.

Ex. AD; Ex. Y; Ex. B.

ACCSC, as provided by the regulations.<sup>101</sup> ACCSC's actions regarding the CEHE-affiliated schools, including the arc of its implementation of maximum timeframe protocols, complied with the regulations.

#### IV. Monitoring and Enforcement Action with Respect to Other Institutions

As requested in the Department's October 27, 2021 letter, the Commission has provided with this response information about ACCSC-accredited institutions that, for the period July 2016 – July 2021 and in relation to student achievement, ACCSC (a) placed on Heightened Monitoring/Outcomes Reporting, Warning, or Probation, and, where applicable, (b) determined to be out of compliance with ACCSC standards and applied the maximum timeframe in which to achieve compliance discussed above.<sup>102</sup> The lists of these institutions provided demonstrate ACCSC's high level of engagement with institutions placed on these statuses. For example, the lists reflect the Commission's ongoing and regular review of each status at Commission meetings, where, as appropriate, the Commission will "continue" a school's status to ensure it keeps working to address questions if needed. In adding information to the lists about subsequent actions taken by ACCSC with respect to these schools, ACCSC has included subsequent actions for which student achievement considerations were not the grounds.<sup>103</sup>

Crucially, these lists amount to a highly condensed snapshot of *very limited* events in the history of ACCSC's interactions with a limited number of schools. The lists do not reflect the richness of the Commission's continuous review of those schools through initial accreditation and renewal processes, Annual Reports, self- and on-site evaluations, substantial responsive submissions, or Commission meetings and orders. They do not reflect in any meaningful way the context of the Commission's thorough decision-making process. The Commission applied its *Standards* in reaching decisions with respect to each of these schools, in line with regulatory requirements and the jurisdiction and discretion granted to ACCSC.<sup>104</sup>

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<sup>101</sup> In one instance, and pursuant to § 602.20, ACCSC found good cause to extend the maximum timeframe for compliance; ACCSC's actions were compliant with § 602.20 as outlined in the timeline graphics.

<sup>102</sup> List of Schools/Programs Placed on Heightened Monitoring/Outcomes Reporting for Student Achievement ("Exhibit AE"); List of Schools Placed on Warning, Probation for Student Achievement (Including, where Applicable, Determination of Noncompliance & Max. Timeframe) ("Exhibit AF"). In line with the request in the SDO's letter, these lists do not include schools continued on status that were placed on the status prior to the recognition period (prior to July 2016). Each school identifier listed represents a single institution accredited by ACCSC, and each appears on each list once.

<sup>103</sup> For example, the subsequent actions (including withdrawal of accreditation) may have been imposed in relation to changes in ownership or financial circumstances. Cases where student achievement was not the grounds for subsequent action are identified in italics on the provided lists of schools.

<sup>104</sup> ACCSC will certainly provide additional information regarding these institutions as appropriate to consideration of its Renewal Petition if requested.



#### **A. Schools Placed on Heightened Monitoring or Outcomes Reporting for Outcomes and subsequent actions<sup>105</sup>**

As seen in the Heightened Monitoring/Outcomes Reporting list and reflecting ACCSC's ongoing, high-touch monitoring and enforcement approach, the Commission placed 192 schools on Outcomes Reporting. Schools generally have one year from placement on Outcomes Reporting to provide evidence demonstrating improved student achievement; a description of the strategies implemented to support student graduation and/or employment; and an assessment of the school's progress toward meeting the Commission's benchmarks. Following those submissions, the Commission reviews the Outcomes Reporting status.

With respect to the schools on the Heightened Monitoring/Outcomes Reporting list:

- The Commission reviewed 160 of 196 Outcomes Reports during the 2016 – 2021 time period. The remaining reports were not reviewed because either (a) the school closed or voluntarily withdrew from accreditation before Commission review, or (b) the Commission was scheduled to review the reports after July 2021.
- In most cases, schools removed from Outcomes Reporting following review of their reports have demonstrated that they that meet benchmarks or discontinued low-performing programs. In two cases, the Commission subsequently voted to revoke accreditation (schools 3201622 and 2254071).
- For the vast majority of the 160 schools with reviewed Outcomes Reports, the Commission reviewed the reports either one or two times and voted to remove schools from reporting in less than two years. The average length of time these schools were on Outcomes Reporting was 19.9 months.
  - In four cases, the Commission placed a school on Outcomes Reporting, accepted the Outcomes Report, and later placed the school on reporting a second time. (Again, ACCSC notes that Outcomes Reporting relates to specific programs, such that a school may resolve below-benchmark data for one program but then be placed on Outcomes Reporting for another program.)
  - Thirteen schools were or have been on Outcomes Reporting for four or more years; as exceptions, these represent reasoned decision-making on the part of the Commission considering specific school and program circumstances and mission. Again, the Commission revoked accreditation for two of these schools; the others are anomalies or have extenuating circumstances. For example, school 116464431 is located in Puerto Rico and has dealt with significant hardships due to hurricanes and earthquakes and, through ongoing review, the Commission determined that an escalating action was not warranted. Another example is school 148023552, which was placed on Outcomes Reporting in 2017 for one of the school's eight programs which has had less than 10 students; the school has submitted information related to the program's viability and the Commission determined that escalating action was not warranted.
  - ACCSC also found that, subsequent to being placed on Outcomes Reporting or Heightened Monitoring, 35 schools withdrew, closed, or, in four instances, had accreditation revoked.

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<sup>105</sup> Ex. AE.

These data indicate that ACCSC is appropriately employing Outcomes Reporting and Heightened Monitoring to support compliance and quality programs. Where ACCSC places a school on reporting status or grants extended Outcomes Reporting, it does so pursuant to its standards and processes, which comply with regulatory requirements. Reporting status is a tool that, for some schools, contributes to ACCSC decisions to revoke accreditation or, in some cases, the schools' decision to withdraw from ACCSC oversight. Most significantly, as seen for the vast majority of schools discussed above, Outcomes Reporting successfully leads to improved program outcomes, or to closure of programs that do not meet benchmarks.

#### **B. Schools Placed on Warning/Probation—and, where Applicable, Schools with a Determination of Noncompliance—for Student Achievement<sup>106</sup>**

This list shows schools placed on Warning or Probation—and, where applicable, schools with a determination of noncompliance—for student achievement during the recognition period. Where there was a determination of noncompliance, the entries show maximum timeframe and duration of noncompliance. The list shows any subsequent actions taken, and designates those subsequent actions that were not initiated due to student achievement. As shown in this list, where the maximum timeframe was implemented (due to a determination of noncompliance), in all cases, the school either: came into compliance; was provided a good cause extension; closed; or ACCSC took adverse action in accordance with the regulatory criteria.

Before a determination of noncompliance is reached, schools have been given opportunities to respond to questions regarding potential noncompliance. Particularly for schools that have first been placed on Heightened Monitoring or Outcomes Reporting, the schools have had opportunities to engage strategies to ensure compliance. Upon a determination of noncompliance, implementing the maximum timeframe to correct noncompliance ensures that institutions either act swiftly to meet standards or terminate accreditation.

As explained and documented, the record illustrates that the Commission works diligently within the confines of its processes and the Department's regulations to afford ACCSC-accredited institutions an opportunity to improve. When such improvement is insufficient and a determination of noncompliance with ACCSC *Standards* is made, ACCSC uses enforcement mechanisms and mandates compliance within timeframes consistent with federal regulations. When compliance is not achieved, an adverse action is taken.

## **CONCLUSION**

The inquiry to be decided by the SDO at this time is whether ACCSC acted in compliance (or substantial compliance) with the *Criteria for Recognition* with respect to ***the entirety*** of its accrediting actions. ACCSC respects the SDO's careful diligence in consideration of its recognition renewal application. **To the extent that the SDO was left concerned about ACCSC's compliance based on NACIQI's haphazard discussion relating to CEHE-affiliated schools, this is a false narrative that is based on conjecture about ACCSC's accreditation work and, perhaps, a desired state of federal accreditation policy that is not rooted in existing regulations, cooperation amongst the triad, and due process requirements.** The record unquestionably demonstrates that ACCSC is in compliance with the *Criteria for Recognition* and its own standards and policies. Indeed, this was the precise conclusion of the Department Staff who both (a) carefully evaluated ACCSC in this recognition renewal process—including by observing a Commission

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<sup>106</sup> Ex. AF.



meeting and the evaluation process and by reviewing extensive documentation from ACCSC's files—and (b), importantly, had extensive information relating to ACCSC's accreditation work involving CEHE-affiliated schools.

Admittedly, the Commission finds it momentarily discouraging to be the target of unfair criticism by some within NACIQI and also possible legal action by Independence University, which indicated in its notice of its intent to pursue arbitration that a federal lawsuit may be necessary to resolve its objection to ACCSC's withdrawal of its accreditation. After taking diligent, determinative, and adverse action against Independence University in accordance with established federal policy and accreditation standards, ACCSC is exhausting extensive human and financial resources at the expense of focusing its attention on what matters most, its mission. When a school closes, it is tempting to armchair quarterback and point fingers in hindsight. The mountain of evidence presented here, however, demonstrates that there is simply no rational basis for rejecting and reducing the Department Staff's recommendation. A contrary action would not only depart from the Department Staff's recommendation, it would also reverse the Department's course of action as to already-considered ACCSC protocols and actions, as well as those of many other accreditors. As discussed in detail above, ACCSC's student achievement framework is, in relevant part, unchanged from that repeatedly considered by the Department and NACIQI in past renewal processes, in response to the Department's inquiry related to CEHE, and by Department Staff in connection with ACCSC's 2021 Renewal Petition.

For all of these reasons, the answer to be reached by the SDO is clear: ACCSC's recognition should be approved for a five-year renewal. If you have any questions about this information, or we can assist you in any other way with respect to your consideration of ACCSC's petition for renewal, please let us know. As is the case in the Department's recognition process, it is our hope that the Department will give ACCSC an opportunity to provide additional information or to provide further explanation for the supporting information attached hereto as may be necessary and useful to the SDO in the decision-making process. ACCSC stands ready to assist the Department in this review and ensure the SDO's decision is based on evidence, a clear understanding of our work, and not conjecture. We have appreciated the years of cooperative partnership with the Department and look forward to continuing to work together on our shared goals around student success.

Finally, please be advised that ACCSC has sought to comply with applicable regulations relating to redactions and designations of potentially non-public information in the voluminous documents accompanying this response. In the event the Department receives a Freedom of Information Act ("FOIA") request for this letter and/or the documentation contained therein, ACCSC respectfully requests that the Department provide notice of the request and a reasonable opportunity to ensure that non-public information will not be disclosed prior to the Department's response.

Respectfully,

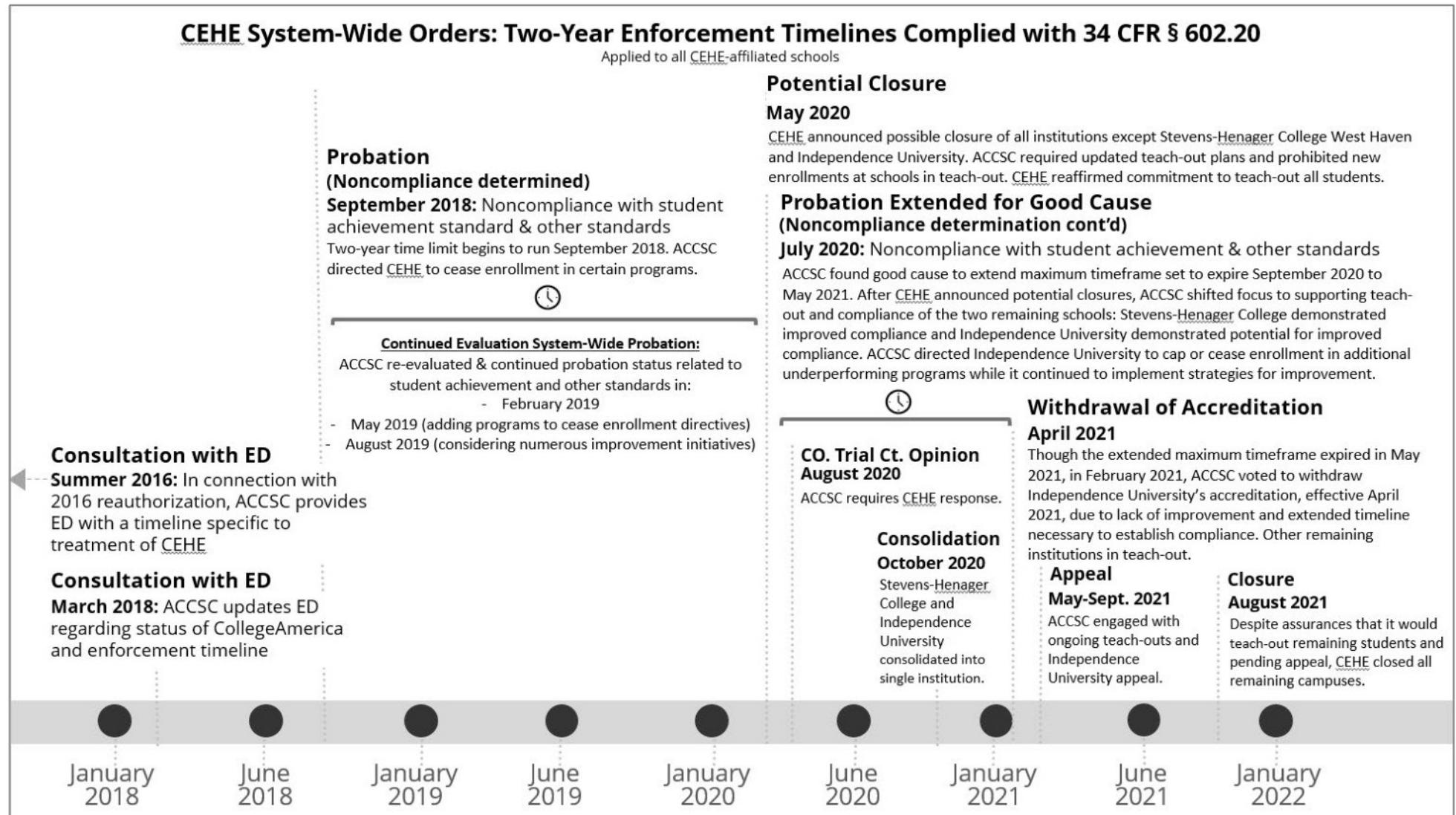
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Michale S. McComis, Ed.D.  
Executive Director



APPENDIX  
Enforcement Timeline Graphics – CEHE-Affiliated Schools

## CEHE System-Wide Orders



## CollegeAmerica Denver: Two-Year Enforcement Timelines Complied with 34 CFR § 602.20

(includes branches at Fort Collins, Colorado Springs & Cheyenne; Cheyenne branch closed March 2017)

### Warning

(Noncompliance determined)

**April 2017:** Noncompliance with student achievement standard

ACCSC determines college is noncompliant with student achievement standard and two-year time limit to come into compliance begins to run April 2017 through April 2019.



### Consultation with ED

**Summer 2016:** In connection with 2016 reauthorization, ACCSC provides ED with a timeline specific to treatment of [CEHE](#)

### Warning

(Monitoring Status)

December 2015 – April 2017: ACCSC vacates Probation due to college's substantial compliance and places college on Warning as a monitoring status, not due to noncompliance.

### Continued Evaluation of College's Warning Status:

ACCSC re-evaluated & continued the college's warning status related to student achievement in:

- February/March 2018
- September 2018

### Consultation with ED

**March 2018:** ACCSC Updates ED regarding status of college and enforcement timeline

### Warning Vacated

**February/May 2019:** Compliance with Warning Order Achieved

Two-year compliance timeframe met as of February 2019 Commission vote determining the college met the conditions of the April 2017 Warning Order by demonstrating successful student achievement in its programs (letter issued May 2, 2019). At the time, ACCSC stated the college was subject to a [CEHE](#) System-wide Probation Order but noted this was due to issues related to [CEHE](#) as the oversight entity and not the issues identified in the April 2017 Warning Order. The noncompliance determined in April 2017 was resolved. See also [CEHE](#)-System Wide Enforcement Timeline Graphic.

### Closure

**September 2020:** The college closed after teaching out its students.

