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February 16, 2018

The Honorable Elisabeth DeVos
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Herman Bounds
Director, Accreditation Group
Office of Postsecondary Education
United States Department of Education
400 Maryland Avenue, SW, Rm. 270-01
Washington, DC 20202

RE: Opposing the Application for Initial Recognition of the Accrediting Council for Independent Colleges and Schools

Dear Secretary DeVos and Mr. Bounds:

We, the undersigned Attorneys General of Massachusetts, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Washington, and the Executive Director of the Hawaii Office of Consumer Protection, write to express our opposition to the Accrediting Council for Independent Colleges and Schools' ("ACICS") application for initial recognition. We provide this letter in response to the Department's call for written comments regarding ACICS's application, as published in the Federal Register on January 24, 2018. Having carefully reviewed the Criteria for the Recognition of Accrediting Agencies, we believe that ACICS is ineligible for recognition and urge the Department to reject its application.

Accreditors serve a critical role in ensuring that schools provide students with an education that meets minimum standards of quality. In this role, accreditors function as gatekeepers, protecting students from abuse by profit-seeking institutions that offer education of little-to-no value. When accreditors shirk their crucial responsibilities, they enable abusive schools to engage in misconduct with impunity. ACICS's previous stint as a nationally recognized accreditor provides a stark illustration of the damage done to both students and taxpayers when accreditors fail to fulfill their oversight responsibilities. During these years,

ACICS willingly accredited predatory schools that left students across the country mired in debt and without the quality education they were promised. Despite being aware of these schools' misconduct, ACICS continued to accredit the institutions, in some cases up until the day the schools closed and filed for bankruptcy.

On the basis of ACICS's extreme and far-reaching oversight failures, the Department took the extraordinary step of denying ACICS's petition for renewal of its national recognition just over one year ago. Given the gravity of ACICS's recent dereliction and the magnitude of the harm ACICS caused to students and taxpayers, any attempt by ACICS to become nationally recognized once again should be treated with great skepticism by the Department. The Department's own regulations establish as a threshold recognition requirement that an agency demonstrate *effective* compliance with the Department's recognition criteria *for at least two years* prior to seeking initial recognition. Since ACICS was found to be noncompliant with the Department's recognition criteria less than two years ago and, in fact, conceded its continued noncompliance with recognition criteria as recently as February 2017, it is simply impossible for ACICS to currently meet this basic recognition requirement. ACICS's application for initial recognition, therefore, must be denied by the Department.

Furthermore, to date, the Department has not made public ACICS's application for initial recognition, depriving the public of an adequate opportunity to participate in the recognition process. We urge the Department to make public ACICS's application and all accompanying documents and to extend the third party comment period to provide commenters with a meaningful opportunity to offer their input. By withholding ACICS's application, the Department has not fulfilled its requirement to provide an opportunity for public input.

ACICS's Recent Oversight Failures Caused Serious Harm to Students Across the Country

The undersigned Attorneys General are charged with enforcing consumer protection laws in our respective states. We have seen firsthand the damage caused by ACICS's dereliction of its responsibilities as an accreditor. As we described in comments submitted to the Department in 2016, numerous investigations initiated by our offices uncovered a fundamental lack of substantive oversight by ACICS. ACICS's lapses include its utter disregard for student outcomes at ACICS-accredited institutions, its inaction after regulators concluded that multiple ACICS-accredited institutions had reported fabricated job placement rates to ACICS, its failure to verify job placement statistics even after findings of fabricated job placement rates were made public, and its concerning lack of transparency or cooperation with investigations into student outcomes at ACICS-accredited institutions.

Among ACICS's most glaring oversight failures is its decision to extend accreditation to a large number of campuses operated by the now-defunct Corinthian Colleges ("Corinthian"). ACICS continued accrediting Corinthian even after upwards of twenty state and federal agencies initiated investigations into Corinthian's fraud. In fact, ACICS continued to accredit Corinthian up until the day Corinthian declared bankruptcy. Because of ACICS's accreditation, thousands of Corinthian students are mired in onerous student loan debt that they incurred to finance useless educations while Corinthian obtained approximately \$3.5 billion dollars from U.S. taxpayers in the form of student loan revenue.

Career Education Corporation (“CEC”), whose Sanford Brown schools were ACICS-accredited, settled with the New York Attorney General’s Office for \$10.25 million based on findings that CEC fabricated job placement rates. ACICS failed to identify the placement rate inaccuracies and, when CEC’s misconduct came to light, failed to terminate or suspend its accreditation of any Sanford Brown schools. ACICS also failed to identify serious compliance problems at Education Management Company (“EDMC”), which settled with thirty-nine State Attorneys General to resolve allegations that the school misled prospective students about program costs, graduation rates, placement rates, and programmatic accreditation. As part of that settlement, EDMC agreed to forgive over \$100 million in outstanding loan debt.

These are merely examples of ACICS’s egregious oversight failures. In its recent review of ACICS, the Department identified 245 ACICS-accredited campuses that were subjects of state and federal investigations and lawsuits concerning fraud, recruitment abuses, and falsification of job placement rates, all while maintaining their ACICS accreditation. As the Senior Department Official (“SDO”) who denied ACICS’s application for renewed recognition in 2016 explained:

By and large the state and federal actions against these schools had been pending for years, and culminated in large consumer protection settlements, and sometimes closing of the institutions. Nonetheless, according to ACICS, none of these 245 campuses had faced withdrawal of accreditation, and only three had been placed, belatedly, on the public sanction of probation.

Brief on Behalf of Senior Department Official in Opposition to Accrediting Council for Independent Colleges and Schools’ Appeal, and in Support of Decision to Deny Renewal of Recognition (“SDO Brief”) at 13.

Notably, while ignoring glaring misconduct at the schools it accredited, ACICS allowed representatives of these schools to serve on its Board of Directors/Commissioners (the “Board”) and Board committees, calling into question ACICS’s incentive structure and ability to fulfill its gatekeeping function with impartiality. For example, representatives from both Corinthian and ITT Tech served on ACICS’s Board while those schools were committing or being investigated for misconduct.

ACICS’s Pervasive Violations of Departmental Recognition Criteria Cost ACICS Its National Recognition

Following an extensive review of ACICS’s accreditation history and oversight failures, the Department made the rare decision to deny ACICS’s petition for renewed recognition in late 2016. Every stage of the review process resulted in the recommendation that ACICS’s recognition should be terminated. This recommendation was made both by the National Advisory Committee on Institutional Quality and Integrity (“NACIQI”) and Department Staff. Ultimately, the SDO found that ACICS had failed to comply with numerous recognition criteria and denied its application for recognition. The Secretary of Education (“Secretary”) reached the same conclusions as the SDO following a *de novo* review of the record, finding that “ACICS has exhibited a profound lack of compliance with the most basic Title IV responsibilities of a

nationally recognized accreditor.” Decision of the Sec’y at 8. In fact, both the SDO and the Secretary concluded that, not only had ACICS engaged in “pervasive noncompliance” with the Department’s recognition criteria, but ACICS’s failure “to develop and effectively implement a comprehensive scheme necessary to establish, apply, effectively monitor, and enforce the required standards” indicated that ACICS could not come into compliance with these requirements in 12 months. *Id.*

In particular, the SDO and the Secretary found that ACICS was out of compliance with 21 recognition criteria:

- 1) Acceptance of ACICS by Others (34 CFR § 602.13)
- 2) Staffing/Financial Resources (34 CFR § 602.15(a)(1))
- 3) Competency of Representatives (34 CFR § 602.15(a)(2))
- 4) Academic/Administrative Representatives (34 CFR § 602.15(a)(3))
- 5) Public Representatives (34 CFR § 602.15(a)(5))
- 6) Conflicts (34 CFR § 602.15(a)(6))
- 7) Student Achievement Standards (34 CFR § 602.16(a)(1)(i))
- 8) Fiscal/Administrative Capacity (34 CFR § 602.16(a)(1)(v))
- 9) Recruiting and Other Practices (34 CFR § 602.16(a)(1)(vii))
- 10) Student Complaints (34 CFR § 602.16(a)(1)(ix))
- 11) Title IV Responsibilities (34 CFR § 602.16(a)(1)(x))
- 12) Mission and Objectives (34 CFR § 602.17(a))
- 13) On-Site Reviews (34 CFR § 602.17(c))
- 14) Reasonable Assurances of Accurate Information (34 CFR § 602.18(d))
- 15) Monitoring (34 CFR § 602.19(b))
- 16) Enforcement Timelines (34 CFR § 602.20(a))
- 17) Enforcement Action (34 CFR § 602.20(b))
- 18) Systematic Review of Standards (34 CFR § 602.21(a), (b))
- 19) When New Evaluation Required (34 CFR § 602.22(a)(3))
- 20) Teach-out Plan Triggers (34 CFR § 602.24(c)(1))
- 21) Fraud and Abuse (34 CFR § 602.27(a)(6)-(7), (b))

These widespread failures allowed abusive institutions to defraud students across the country while benefiting from billions of taxpayer dollars. The Department’s findings revealed a deeply flawed and inadequate oversight system, and they highlighted ACICS’s willful disregard for the abuses perpetrated by its accredited institutions and the severe consequences for the students subjected to these abuses. As the SDO explained, the Department found that “ACICS avoids taking significant enforcement action even when it is well aware of violations of its standards.” SDO Brief at 14. Notably, the Department Staff, the SDO and the Secretary found that ACICS’s policies “permit[ted] accreditation of non-compliant institutions, and provide[d] multiple opportunities for [ACICS] to continue that status indefinitely, particularly with respect to non-compliance with [ACICS’s] student achievement standards.” SDO Brief at 15. ACICS’s deficiencies not only manifested in its own failure to take action against abusive institutions, but also hindered the Department’s ability to take any such actions itself because ACICS “has a history of failing to apprise the Department of clear evidence it uncovers of consumer and federal student aid fraud occurring at institutions it accredits.” *Id.* at 19.

In addition to laying bare ACICS’s grave noncompliance with numerous recognition criteria, the Department also found that ACICS lacked coherent plans to fix its serious deficiencies. For example, with respect to monitoring student achievement, the Secretary found that ACICS’s policies were deeply deficient and, moreover, that its “progress in developing and effectively implementing student achievement standards was entirely lacking or incoherent.” Decision of the Sec’y at 6. As the SDO explained, even during its attempts to secure renewed recognition, ACICS failed to “accurately describe what its student achievement standards look like [], or what they will look like in the future. The content of the standards, and who decides what that is, appears to fluctuate for convenience” SDO Brief at 17.

Even in those instances when ACICS has identified and promised to implement policy changes, ACICS has repeatedly broken its commitment to do so. Many of the problems identified by the Department during ACICS’s previous recognition process were first identified by the Department in 2013. At that time, ACICS represented to the Department that it was initiating new policies and processes—including those related to student achievement and verifying employment data. *See* Final Staff Analysis at 29. Nonetheless, during the 2016 recognition proceeding, the Department discovered that ACICS had not implemented the changes it had promised to make. *Id.*; SDO Brief at 30. ACICS’s history of neglecting its commitments to the Department and ignoring its existing policies raises serious concerns about its fitness to serve as a nationally recognized accreditor.

ACICS’s renewed bid for recognition is particularly troubling in light of the institutions that ACICS would likely oversee were it to regain recognition. While many of the institutions that ACICS accredited at the time it lost its recognition have either closed, obtained a new accreditor, or are well on their way to obtaining a new accreditor, a number of ACICS-accredited institutions—with combined enrollment in the tens of thousands—have been unable to progress successfully in the search for a new accreditor.¹ If ACICS is successful in obtaining national recognition, it will be responsible for overseeing the very institutions that have been least able to convince other agencies to accredit them. This is deeply problematic given ACICS’s history of enabling some of the most abusive and unethical institutions.

ACICS Is Ineligible for Recognition under the Department’s Criteria for Initial Recognition

ACICS’s recent failures to comply with the Department’s recognition criteria disqualify ACICS from obtaining initial recognition at this time and require the Department to deny ACICS’s pending application. The Department has articulated requirements that accreditors must meet in order to be eligible for initial recognition. Under the regulations governing the Department’s recognition of an accrediting agency, an agency’s recognition requires a determination by Department officials that the agency “complies with the [enumerated] criteria for recognition . . . and that the agency is *effective* in its application of those criteria.” 34 CFR § 602.3 (emphasis added). The enumerated criteria for initial recognition include the requirement

¹ *See* Center for American Progress, “A Second Status Update on ACICS Colleges” (Feb. 6, 2018), <https://www.americanprogress.org/issues/education-postsecondary/news/2018/02/06/445946/second-status-update-acics-colleges>.

that the agency seeking recognition must demonstrate that it has “[c]onducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, *for at least two years prior to seeking recognition.*” 34 CFR § 602.12(a)(2) (emphasis added). By the terms of these regulations, an accreditor can only be eligible for initial recognition if it can demonstrate that it has been *effective* in conducting accrediting activities in accordance with the Department’s recognition criteria *for at least two years* prior to seeking initial recognition. ACICS cannot meet this threshold requirement.

Based on the unambiguous timeline of ACICS’s prior loss of recognition, ACICS could not possibly demonstrate that it has been an effective accreditor in compliance with the Department’s recognition criteria for two years. On December 12, 2016—less than 15 months ago—the Secretary determined that ACICS was not in compliance with the Department’s recognition criteria and that, “because of the nature and scope of ACICS’s pervasive noncompliance,” it would be impossible for ACICS to become compliant within 12 months. Decision of the Sec’y at 1. In other words, the Department previously concluded, following an extensive review of the record, that ACICS could not enter compliance before December 2017. Given this previous Departmental determination, the earliest ACICS could satisfy the Department’s threshold requirement of demonstrating effective accreditation *for at least two years* is December 2019.

ACICS has repeatedly conceded its noncompliance with recognition criteria and reiterated its noncompliance as recently as February 21, 2017. At ACICS’s previous NACIQI hearing in June 2016, ACICS admitted that it was not in compliance with the Department’s recognition criteria. Tr. of NACIQI Hearing (June 23, 2016), Test. Of Lawrence Leak, Chair of ACICS Bd. Of Dirs. At 71:12-15. Furthermore, in arguing for a temporary restraining order to enjoin the Secretary’s termination decision, ACICS’s attorney conceded that ACICS was not yet in compliance with all of the required recognition criteria, explaining that with respect to “the [] remaining approximately ten or so criteria [ACICS] has indicated it can come into compliance [] over the next 12 months.” *ACICS v. DeVos*, No.16-2448, TRO Hr’g TR. 8:8-15, Dec. 20, 2016.² Among those “ten or so” unmet criteria, ACICS admitted that it had not yet approved a process for auditing job placement rates that it had promised to adopt in 2013. *Id.* at 45:4-8. The absence of such auditing procedures contributed to ACICS’s previous failures to function as an effective accreditor and to its facilitation of the misconduct that destroyed the lives of thousands of students. Less than a year ago, on February 21, 2017, ACICS Interim President Roger Williams again conceded ACICS’s noncompliance, explaining that he “still believe[s]” that “[ACICS] could come into compliance within 12 months.” *ACICS v. DeVos*, No.16-2448, P.I. Hr’g. Tr. 56:11-20, February 21, 2017.

Critically, demonstrating compliance with recognition criteria would require more than simply pointing to new policies. As the Department previously explained, “ACICS would have to provide *evidence* of effective *application and implementation* of [any] new policies, practices, and governance structures.” SDO Brief at 9 (emphasis added). Department staff have already

² On February 22, 2017, the Court denied ACICS’s motion for a preliminary injunction on the grounds that ACICS had failed to make a showing of substantial likelihood of success on the merits or risk of irreparable harm, and that the balance of equities and public interest considerations weighed in favor of denying injunctive relief. *ACICS v. DeVos*, No.16-2448, Order Denying Motion for Preliminary Injunction.

expressed concern about the actual effectiveness of a number of ACICS’s proposed changes, noting that “the ultimate utility of at least some of these [proposed reforms], if actually implemented, appears problematic.” *Id.* at 26. In any event, ACICS implemented a number of its new accreditation standards as recently as September 14, 2017—less than six months ago. Accordingly, based solely on the timeline of ACICS’s policy changes, it would be impossible for ACICS to demonstrate that its new policies are effective any earlier than September 14, 2019. ACICS’s current application for initial recognition is, therefore, premature and must be denied.


The Department Has Not Provided an Adequate Opportunity for Public Comment Regarding ACICS’s Application for Recognition

Despite soliciting public comments on ACICS’s application for initial recognition, the Department has withheld the application itself from the public. As outlined above, ACICS would be incapable of meeting the Department’s threshold requirement for recognition at this time under any circumstances. Nonetheless, the Department’s failure to make public ACICS’s application materials during the public comment window denies the public a meaningful opportunity to comment fully on ACICS’s application. Withholding these materials negates the purpose of the public input process that the Department is required to undertake in considering an accreditor’s application for recognition under the Higher Education Act, 20 U.S.C. § 1099b(n)(1)(A). We, therefore, urge the Department to make public ACICS’s application materials immediately and to provide third parties with a meaningful opportunity to comment on the materials.

ACICS’s systemic accreditation failures and refusal to fulfill its obligations to students and taxpayers have enabled predatory schools to ruin the lives of hundreds of thousands of students while enriching themselves at taxpayers’ expense. Given the gravity of these failures, the Department should not grant any application for recognition made by ACICS without verifying that ACICS has corrected every deficiency and complied with all Departmental requirements effectively and consistently. ACICS simply could not, under any circumstances, demonstrate effective compliance with the Department’s recognition criteria for the requisite minimum two-year time period. Accordingly, we urge the Department to deny ACICS’s application for initial recognition, as necessitated by the Department’s regulations.

Sincerely,


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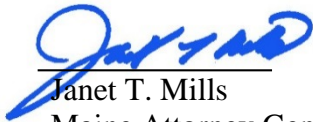
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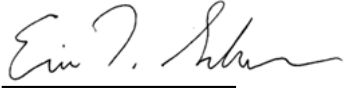
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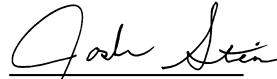
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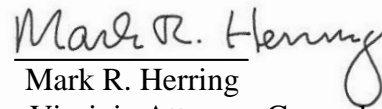
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