



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of:

**ACCREDITING COUNCIL FOR
INDEPENDENT COLLEGES AND SCHOOLS**

Docket No. 16-44-O
Accrediting Agency
Recognition Proceeding

Respondent.

DECISION OF THE SECRETARY

The case before me presents the question of whether and to what extent the Accrediting Council for Independent Colleges and Schools (“ACICS”) should have its recognition renewed. By order of the U.S. District Court for the District of Columbia, I am obligated to consider this question in the context of the “Part II submission,” approximately 36,000 pages of documents filed by ACICS in response to a departmental request for information in 2016.¹ Since the Court remanded the case, I provided ACICS and the Senior Departmental Official (“SDO”) opportunities to file briefs. With the benefit of the briefs, the Part II submission, and the extensive record assembled in this case, I will render a final decision for the Department.

Based on the following analysis, I find ACICS compliant with all but two recognition criteria. I also adopt the SDO’s current recommendation that ACICS should be granted a 12-month period to come into compliance with those two criteria, along with implementing several reporting requirements to ensure ongoing compliance. Therefore, I will grant ACICS recognition while requiring it to demonstrate full compliance within 12 months.

I. Background

The vast background of this case is already well known by the parties. I will summarize it only briefly to provide context for this decision. ACICS is an accrediting agency previously recognized by the Department. In 2016, the Office of Postsecondary Education (OPE) reviewed ACICS’s petition to renew its recognition. In its draft report, OPE found ACICS out of compliance and recommended against renewal of recognition to the National Advisory Committee on Institutional Quality and Integrity (NACIQI). During this time, the Department required ACICS to submit additional information, which would become the Part II submission. After receipt of the Part II submission, but without reviewing those documents, OPE issued its final report (Final Staff Report) and recommendations to NACIQI. After its own meeting on

¹ *Accrediting Council for Indep. Colleges and Sch. v. DeVos*, No. 16-2448, slip. op. at 9–10 (D.D.C. Mar. 23, 2018) (ACICS).

June 23, 2016, NACIQI also advised against renewing ACICS's recognition. Finally, and again without reviewing the Part II submission, the SDO submitted a recommendation to the Secretary, who denied ACICS's petition for renewal of recognition on December 12, 2016 (2016 Secretary's Decision). On December 15, 2016, ACICS sued the Department in the United States District Court for the District of Columbia, challenging the 2016 Secretary's Decision as a violation of the Administrative Procedure Act.

On appeal, the District Court found that the Secretary violated the Administrative Procedure Act by failing to consider the Part II submission and evidence of ACICS's placement verification and data integrity programs and procedures.² The Court found that failure to consider this evidence rendered the 2016 Secretary's Decision arbitrary and capricious for failure to consider all relevant evidence.³ ACICS sought the remedy of remand directly to the Department's staff for consideration of the additional evidence.⁴ However, the Court concluded the proper remedy was to remand the matter to me, noting that I would "consider an application *de novo*," could return the matter to Department staff for review and analysis, and ultimately could take into account this additional evidence and analysis in my review.⁵

Upon receiving the case on remand, I provided both the SDO and ACICS an opportunity to provide analysis of the Part II submission and any additional information the parties wished for me to consider. ACICS provided additional information (2018 Supplement) and, subsequently, the SDO provided a 77-page response (SDO Response)⁶ considering the merits of recognition in light of all the available evidence, including the Final Staff Report, 2016 Secretary's Decision, and all materials submitted by ACICS, including the Part II submission and 2018 Supplement. With the benefit of this material, I will turn to my analysis of whether to grant recognition to ACICS.

II. Analysis

In the interest of brevity, I will group the compliance violations categorically based on the SDO's recommendation.⁷ First, I will address those criteria where the SDO found ACICS noncompliant. Then, I will discuss those criteria where the SDO found ACICS compliant but recommended additional monitoring stipulations. Finally, I will cover those criteria where the SDO recommended that I find ACICS compliant without stipulations.

a. Areas of Noncompliance

² ACICS, pp. 31–41, 47–51, 65.

³ *Id.*, pp. 30, 41.

⁴ *Id.*, p. 64.

⁵ *Id.*, pp. 64–65.

⁶ On Oct. 15, 2018, the SDO filed a motion to correct the SDO Response for the singular purpose of revising the list of entities cited as accepting ACICS. That motion is granted. The SDO Response cited hereafter is the corrected version filed on Oct. 15, 2018.

⁷ I note that the SDO has discussed ACICS's placement verification and data integrity programs and procedures in a separate portion of the SDO Response. I will take that analysis, and the underlying evidence, into consideration within the context of each of the recognition criteria.

The SDO found ACICS noncompliant with two recognition criteria: 1) 34 C.F.R. § 602.15(a)(2) – Competency of Representatives, and 2) § 602.15(a)(6) – Conflict of Interest. I will discuss each criterion in turn.

i. 34 C.F.R. § 602.15(a)(2) – Competency of Representatives

This standard generally requires an agency to utilize qualified and competent individuals in performing its various activities leading up to accreditation decisions. The Final Staff Report found a lack of compliance, because ACICS could not demonstrate that new training procedures for volunteers, the new Ethics Review Board (ERB), and its data verification regimes were effective.⁸ Although ACICS responded to these concerns prior to publication of the Final Staff Report, OPE found the training to be “still in flux” and considered it “too early to determine the effectiveness of that training.”⁹ OPE also found problems with the planned inclusion of a Data Integrity Reviewer in site visits because institutions would need special attention between site visits and it was “too early to evaluate the effectiveness of” training for a student relations specialist.¹⁰ Finally, OPE considered it too early to determine whether the ERB would be effective.¹¹

With regard to training procedures, the SDO found that ACICS demonstrated in the Part II submission and 2018 Supplement that it had significantly improved its training regimen.¹² However, ACICS had not yet documented that its volunteers had the benefit of the improved training processes. With regard to the ERB, the SDO noted that ACICS had established the entity and engaged in some conflict resolution.¹³ However, the ERB had not formally convened because an actual meeting was “not needed.”¹⁴ Finally, with regard to the data verification regime, the SDO found ACICS had failed to provide the qualifications of its Data Integrity Reviewer.¹⁵

Based on these findings, the SDO finds ACICS out of compliance with this standard, but unlike the 2016 Secretary’s Decision, the SDO does not conclude that ACICS could not come into compliance within 12 months. The SDO recommends that I renew recognition, giving ACICS time to come into compliance. I agree and adopt the SDO’s recommendation. I will require “that ACICS submit a compliance report within 12 months and [] provide additional evidence responding to whether existing evaluators have received the improved training and to answer questions regarding qualifications of the Data Integrity Reviewer. In addition, this compliance report should also explain how ACICS has made progress to ensure its Ethics Review Board . . . has met and to explain how it will be an integrated part of ACICS’s efforts to remain compliant with this criterion.”¹⁶

⁸ Final Staff Report, p. 1.

⁹ *Id.*, p. 8.

¹⁰ *Id.*

¹¹ *Id.*, pp. 8–9.

¹² SDO Response, pp. 31–32.

¹³ *Id.*, pp. 33–34.

¹⁴ *Id.*, p. 33.

¹⁵ *Id.*, pp. 32–33.

¹⁶ *Id.*, p. 34.

ii. 34 C.F.R. § 602.15(a)(6) – Conflict of Interest

This criterion requires an agency to demonstrate that it has effective controls against conflicts of interest. The staff conclusion in the Final Staff Report, adopted in the 2016 Secretary’s Decision, was that ACICS failed to comply because it did not produce signed attestation forms regarding conflicts of interest from members of a prior meeting of the Intermediate Review Committee (IRC).¹⁷ More specifically, staff required ACICS to “provide documentation that all members of an IRC have consistently signed an attestation regarding conflict of interest issues, and if not, to explain why not.”¹⁸

The SDO finds ACICS out of compliance with this criterion on the same basis as the 2016 Secretary’s Decision, because ACICS has still not produced the required documentation, but the SDO does not recommend against recognition. Finding that ACICS has made significant improvements to its procedures to avoid conflicts of interest, the SDO recommends that ACICS be given 12 months to come into compliance. Based on the evidence in the Part II submission and 2018 Supplement, I agree with the SDO’s recommendation and adopt it. I will provide ACICS 12 months to comply, specifically “to submit a compliance report within 12 months evidencing it requires its IRC members to sign conflicts of interest attestations.”¹⁹

b. Areas of Compliance with Additional Monitoring

The SDO found ACICS compliant with the remaining 19 out of 21 criteria at issue in the remanded decision; however, the SDO recommended additional monitoring with regard to the four criteria listed below.

- § 602.15(a)(1) – Administrative and Financial Resources
- § 602.16(a)(1)(i) – Accreditation and Preaccreditation Standards – Student Achievement
- § 602.16(a)(1)(vii) – Recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising
- § 602.19(b) – Monitoring

I find the SDO’s analysis to be comprehensive and thoroughly cited to the evidence. The SDO has incorporated the Part II submission into the documentation available at the time of the 2016 Secretary’s Decision, along with new submissions made by ACICS during the pendency of this case. The SDO has accomplished the analysis required by the Court in exemplary fashion.

The evidence before me bears out the SDO’s conclusions. ACICS is substantially in compliance with the remaining 19 criteria. The 2016 Secretary’s Decision ignored or mischaracterized significant evidence to conclude otherwise. I will also heed the SDO’s recommendations regarding specific monitoring goals for ACICS going forward, as described below.

¹⁷ Final Staff Report, pp. 10–11.

¹⁸ *Id.*, p. 10.

¹⁹ SDO Response, p. 37.

i. § 602.15(a)(1) – Administrative and Financial Resources

This standard requires an agency to have “the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.” Although the 2016 Secretary’s Decision held that ACICS did not comply with this requirement, the Final Staff Report actually found ACICS’s administrative processes to be “functioning efficiently” and with “no complaints.”²⁰ With regard to fiscal capability, ACICS has demonstrated its solvency by continuing to operate (even spending \$2 million on IT system upgrades) in the wake of the Department’s decision not to renew its recognition.²¹ In light of this documentary evidence, I disagree with the finding of noncompliance on this criterion in the 2016 Secretary’s Decision.

I adopt the SDO’s recommendation to find ACICS compliant with this criterion. To ensure ACICS continues to demonstrate administrative and fiscal capability, however, I order ACICS to provide to staff its audited financial records on a yearly basis over the next three years. I also order ACICS to provide a report demonstrating the adequacy of its staffing in the context of its institutional and program membership.

ii. § 602.16(a)(1)(i) – Accreditation and Pre-Accreditation Standards – Student Achievement

This standard generally requires an agency to establish and enforce standards to ensure institutions and programs promote student achievement. In recommending a finding of violation of this criterion, the Final Staff Report focused primarily on alleged widespread placement rate falsification by certain ACICS institutions.²² The finding especially noted ACICS’s failure to establish procedures to evaluate and act on falsified verification data.

In finding ACICS now compliant with this criterion, the SDO points to evidence in the Part II submission that ACICS has developed a Placement Verification Program (PVP).²³ Created in conjunction with stakeholders and auditors, the PVP allows ACICS to monitor institutional placement data in between accreditation reviews. ACICS also enlisted a “dedicated student achievement data evaluator” to review all “job placement data reported by an institution as part of every site visit” and ACICS “implemented a data integrity test to assess CAR [Campus Accountability Report] results that are uploaded annually to the ACICS platform.”²⁴ ACICS had begun testing the PVP system in 2016 and fully implemented it by 2017. The SDO also notes that ACICS now has “articulated clear student achievement standards, including benchmarks.”²⁵

Based on these findings, I adopt the SDO’s recommendation to find ACICS compliant with this criterion; however, I order ACICS to submit an annual report to the Department detailing the function and effectiveness of the PVP system, “to notify the Department of any

²⁰ Final Staff Report, p. 6.

²¹ SDO Response, pp. 29–30.

²² Final Staff Report, p. 2.

²³ SDO Response, p. 13, 39.

²⁴ *Id.*, p. 14.

²⁵ *Id.*, p. 41.

changes made to the system or the protocol, to identify continuing strengths or weaknesses of the system, to provide a plan for addressing those weaknesses, and to report on the percentage of placements each year which are found to be invalid during third party review and are not resolved by the institution through the submission of additional information. In addition, that report should include a description of programs where it appears to be particularly difficult to obtain email verification of employment from either the graduate or the employer, and a plan for trying to reach those individuals through alternative means. This report should also include a table indicating which institutions were cited for high error rates or lack of data integrity, the action the agency took in those instances, and the results of that action.”²⁶

iii. § 602.16(a)(1)(vii) – Recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising

This standard requires an agency to create and enforce rules regarding institutions’ recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising. The Final Staff Report found that ACICS had certain policies aimed at addressing this standard and had used them with regard to deficient institutions.²⁷ Nevertheless, in recommending a finding of violation, the Final Staff Report pointed to deficient institutions making settlement agreements with state attorneys general as evidence that ACICS’s policies were insufficient.²⁸

The SDO points to significant evidence in the Part II submission of additional policies enacted by ACICS, including prior to the 2016 Secretary’s Decision, and how ACICS employed those policies with regard to specific institutions.²⁹ The Part II submission also includes numerous instances of ACICS enforcing appropriate standards, including through reporting requirements, site visits, and requiring that institutions make certain data publicly available.³⁰ The SDO also generally notes that the implementation of the PVP addresses how institutions use placement data in advertising.³¹

I find an abundance of evidence that ACICS is compliant with this standard. I also adopt the SDO’s recommendation that “ACICS submit an annual report to the Department that includes a table outlining problems or concerns identified by the ARIG [At Risk Working Group], actions taken to address those concerns, and any Council decisions regarding the institutions identified by the ARIG as being at-risk institutions or institutions violating ACICS requirements regarding advertising, recruiting, publication of student achievement data, or any other ACICS requirement, especially as they relate to administrative or fiscal capacity of an institution.”³²

iv. § 602.19(b) – Monitoring

²⁶ *Id.*, p. 43.

²⁷ Final Staff Report, pp. 14–15.

²⁸ *Id.*, p. 2.

²⁹ SDO Response, p. 48.

³⁰ *Id.*, pp. 48–49.

³¹ *Id.*, p. 48.

³² *Id.*, p. 50.

This standard requires the agency to demonstrate that its monitoring and evaluation procedures identify compliance problems in accredited institutions and programs, including collection of reports and other data. As it did with other criteria, the Final Staff Report found that ACICS had procedures aimed at meeting this standard, but recommended a finding of violation based on institutions' job placement falsification and disputes with state attorneys general.³³ Although ACICS developed additional procedures to address these issues, the Final Staff Report found it impossible for ACICS to implement and demonstrate the effectiveness of these procedures even if given a 12-month period to attempt to come into compliance.

The SDO concludes that the Final Staff Report would have benefited from review of the evidence in the Part II submission, wherein ACICS describes its monitoring and evaluation of the deficient institutions cited in the Final Staff Report.³⁴ Based on that evidence, the SDO finds that ACICS was already in compliance with the requirement in 2016 and should be found compliant now.³⁵

I am persuaded by the abundance of evidence provided in the Part II submission and 2018 Supplement and find ACICS compliant with this criteria; however, I also adopt the SDO's recommendation that ACICS "submit to the Department an annual report of the actions and activities of its ARIG including any follow-up actions taken by the Council as result of the ARIG's work."³⁶

c. Areas of Compliance without Stipulations

Finally, the SDO recommended findings of compliance, without additional stipulations, for the remaining 15 criteria listed below.

- § 602.13 – Acceptance of the Agency by Others³⁷
- § 602.15(a)(3) – Academic/Administrator Representatives
- § 602.15(a)(5) – Public Representatives
- § 602.16(a)(1)(v) – Accreditation and Preaccreditation Standards: Fiscal/Administrative Capacity
- § 602.16(a)(1)(ix) – Record of student complaints received by, or available to, the agency
- § 602.16(a)(1)(x) – Records of compliance regarding Title IV
- § 602.17(a) – Application of standards in reaching an accrediting decision
- § 602.17(c) – On-site Reviews
- § 602.18(d) – Reasonable Assurance of Accurate Information

³³ Final Staff Report, pp. 21–22.

³⁴ SDO Response, p. 66.

³⁵ *Id.*, pp. 66–67.

³⁶ *Id.*, p. 67.

³⁷ The record shows that ACICS is "accepted" for the purposes of § 602.13 by numerous educators, as well as the American Council for Occupational Therapy Education, the American Registry of Radiologic Technologists, the Commission on Accreditation in Physical Therapy Education, the Accrediting Bureau of Health Education Schools, and the Accrediting Commission for Education in Nursing. 2018 Supplement, Exs. B-O-8–B-O-11, B-O-41–B-O-45.

- § 602.20(a) – Enforcement of Standards (Timeframes)
- § 602.20(b) – Enforcement of Standards (Adverse Action)
- § 602.21(a)-(b) – Review of Standards
- § 602.22(a)(3) – Substantive Change
- § 602.24(c)(1) – Teach-out Plan Triggers
- § 602.27(a)(6)-(7), (b) – Fraud and Abuse

In the opinion of the SDO, ACICS is currently, and in many cases was in 2016, substantially compliant with all of these criteria. Among other things, the SDO believes the 2016 Secretary's Decision and the recommendations below suffered from insufficient evidence,³⁸ circular reasoning,³⁹ and a desire to achieve a preordained result.⁴⁰ For all of these criteria, review of the Part II submission either reinforces the existing state of compliance⁴¹ or finally demonstrates compliance for the purposes of this decision.⁴²

The SDO has laid out a persuasive analysis with significant reference to the evidence available, including the Part II submission and 2018 Supplement. I find the SDO's recommendation well-founded and persuasive with regard to the remaining criteria. Therefore, I adopt the SDO's recommendation, along with the SDO's analysis of the cited evidence, with regard to these criteria and find ACICS in compliance with them.

ORDER

Based on the foregoing analysis, I find ACICS noncompliant with § 602.15(a)(2) and § 602.15(a)(6). I find ACICS compliant with the remaining 19 criteria subject to additional reporting requirements detailed in my analysis. Accordingly, I grant ACICS continued recognition with the condition that it submit compliance reports within 12 months demonstrating full compliance with §§ 602.15(a)(2) and (a)(6).

So ordered this 21st day of November 2018.



 Betsy DeVos

Washington, D.C.

³⁸ SDO Response, p. 30

³⁹ *Id.*, p. 27

⁴⁰ *Id.*, p. 42

⁴¹ *Id.*, p. 35

⁴² *Id.*, pp. 36, 37, 39, 41, 44 (implementation of policies for identifying at-risk institutions - § 602.16(a)(1)(v)), 48 (implementation of systems to improve assessment of institutions' recruiting, admissions, advertising and related practices - § 602.16(a)(1)(vii))

Service List

Michelle Edwards
Accrediting Council for Independent Colleges and Schools
750 First Street, N.E.
Suite 980
Washington, D.C. 20002-4223

Katherine D. Brodie, Esq.
Duane Morris LLP
505 9th Street N.W., Suite 1000
Washington, D.C. 20004

Allyson B. Baker, Esq.
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601

Kenneth J. Ingram, Esq.
Whiteford Taylor Preston LLP
1800 M Street, N.W., Suite 450N
Washington, D.C. 20036

J. Justin Riemer, Esq.
Sarah W. Morgan, Esq.
Donna Mangold, Esq.
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202