

Congress of the United States

Washington, DC 20510

December 11, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

We write to urge the U.S. Department of Education (“Department”) to rescind the recent decision to restore federal recognition of the Accrediting Council of Independent Colleges and Schools (ACICS).¹ In light of the latest abrupt closure of Education Corporation of America – and the lack of clear oversight and protection from ACICS on behalf of over 20,000 students at 70 campuses nationwide² – it is clear you made this decision improperly and despite warnings in a letter sent on October 18, 2018 requesting that the Department immediately address significant deficiencies in the Senior Designated Official’s (SDO) analysis and recommendation before making a final decision. It appears that you ignored these warnings and instead published your final decision on November 21, 2018 without addressing the identified deficiencies.

Furthermore, we have obtained new evidence that reveals substantial erroneous and misleading information in the SDO’s analysis – information that you later affirmed and mirrored in the final recognition decision. This erroneous and misleading information calls into question the legitimacy of the entire recognition decision, including the claim that ACICS is compliant with 19 out of 21 federal criteria for recognition. ACICS was not compliant with federal recognition standards in December 2016 and remains out of compliance two years later. Therefore, we ask that, in addition to rescinding the decision to restore the federal recognition of ACICS, you also order a new recommendation from the SDO that corrects all prior errors and that the Department immediately release all ACICS documents that were considered as part of the November 21, 2018 recognition decision.

Background on the Education Department's Claims about ACICS

Two years ago, the Department denied federal recognition of ACICS because of “pervasive compliance problems,” many of which were related to the controversy about ACICS’s questionable oversight of several predatory for-profit colleges, including Corinthian Colleges, Inc., ITT Education Services, Inc., and FastTrain College.³ ACICS sued to block this derecognition and, in April of this year, you temporarily restored their recognition as the

¹ Decision of the Education Secretary, Betsy DeVos, regarding ACICS recognition, November 21, 2018 https://www.insidehighered.com/sites/default/server_files/media/ACICS%20FAD%2011.21.2018.pdf

² Kreignbaum, Andrew. “Collapse of For-Profit Chain Long in the Making.” *Inside Higher Ed*. Published December 6, 2018. <https://www.insidehighered.com/news/2018/12/06/closure-education-corporation-america-raises-questions-about-oversight-and-support>

³ Letter from former U.S. Department of Education Secretary John King to ACICS <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>

Department considered additional documents submitted by ACICS.⁴ On September 28, 2018, Ms. Diane Auer Jones, the Department's SDO, recommended continuing ACICS's recognition. Now, only two weeks after the Secretary's final decision to restore ACICS's recognition, the largest remaining college chain under ACICS, the Education Corporation of America, has abruptly shut its doors. ACICS now has the unique distinction of being the sole accrediting agency that has overseen the three largest college collapses in higher education. In every case, ACICS has disregarded clear warning signs and has failed to act quickly enough to protect students and taxpayers.

Meanwhile, as we stated in our October 18, 2018 letter to you and as described below, the SDO's recommendation was based on inaccurate information. The SDO stated that ACICS met 19 out of 21 federal criteria, including that ACICS is "widely accepted" by the higher education community.⁵ Wide acceptance is considered a "basic eligibility requirement" in the regulation, meaning that if ACICS does not meet this wide acceptance criteria, as well as three additional requirements related to its link to federal programs, geographic scope of activities, and accrediting experience, they are automatically ineligible.⁶ The evidence cited by the SDO for this criterion was that "ACICS provided letters of support from nine other accrediting agencies," and that "this support of ACICS as a peer ... serves as important evidence of ACICS's wide acceptance."⁷

These claims of endorsement turned out to be false. *Politico* reported on October 4, 2018 that "many of those accreditors cited by the department... never submitted letters of support for ACICS."⁸ In an October 3, 2018 meeting with the Department, several of these accreditors reportedly expressed their concern about the misinformation. The Department called the claims "an inadvertent error in the editing process," and posted a "correction" on October 15, 2018.⁹ Eight of the nine accreditors have also since confirmed that they have not sent anything on the topic to the Department or to ACICS.

The SDO's "correction" still cited letters of support, but from only one of the originally cited institutional accrediting agencies, the Accrediting Bureau of Health Education Schools (ABHES), as well as from four other programmatic agencies: Accreditation Council for Occupational Therapy Education (ACOTE), Commission on Accreditation in Physical Therapy Education (CAPTE), Accreditation Commission for Education in Nursing (ACEN), and American Registry of Radiologic Technologists (ARRT). Your recent decision to affirm the

⁴ Letter from U.S. Department of Education Secretary Betsy DeVos to ACICS <https://www2.ed.gov/documents/press-releases/acics-docketno-16-44-0.pdf>

⁵ Letter from Diane Auer Jones, Deputy Under Secretary of Education, to ACICS, September 29, 2018 https://www.insidehighered.com/sites/default/server_files/media/SDO%20Response%20to%20ACICS%209.28.18.pdf

⁶ Subject Group 31: <https://www.law.cornell.edu/cfr/text/34/part-602/subpart-B>

⁷ *Id.*

⁸ Leonor, Mel. "Education Department overstated endorsements of for-profit college accreditor." *Politico Pro*. Published October 4, 2018 and updated October 5, 2018. <https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214>

⁹ Correction to Letter from Diane Auer Jones, Deputy Under Secretary of Education, to ACICS, Updated October 15, 2018, Page 24. <https://www2.ed.gov/about/offices/list/ope/correctedresponsefinal.pdf>

SDO's recommendation cites these five accreditors as the primary evidence that ACICS meets the wide acceptance criterion.¹⁰

However, we have new information revealing that—even in the “correction” to the SDO report and the final decision issued by the Department—the SDO and the Department again exaggerated and misstated the level of acceptance and support from these agencies. The problematic statements issued by the Department regarding the “widely accepted” criteria raises new questions about the entire process that the Department undertook to arrive at its decision regarding all the federal criteria that it considered, including whether the Department considered all relevant information and how the Department interpreted the documents submitted by ACICS—documents that Members of Congress and the public still have not seen.

Findings of Congressional Inquiry into the Department's False Claims

In the wake of the reporting about the SDO's use of false information, many of us wrote to all 13 accrediting agencies that have been referenced by the SDO. Eight of the nine accrediting agencies cited in the SDO's initial recommendation disputed that they had provided any letters of support.¹¹ Each of these eight agencies confirmed that they did not provide any written or verbal statements to the Department or to ACICS regarding the agency's acceptance as an accreditor in the higher education community.

The New England Commission on Higher Education (NECHE), for example, said that “we have not provided ...any oral or written statements ... endorsing ACICS as an accepted accreditor within the higher education community.”¹² They also stated, “[w]e do not have any relationship with ACICS nor with the institutions they accredit, so would not be in a position to endorse them as a ‘widely accepted’ accreditor.”¹³ The Western Association of Schools and Colleges Senior College and University Commission (WSCUC) said that they “did not provide any statements to the U.S. Department of Education or ACICS regarding endorsing ACICS,” and that the organization does “not know why the Department referred inaccurately to WSCUC as having endorsed the recognition of ACICS.”¹⁴

The Congressional inquiry also reveals that on October 5, 2018, after several accrediting agencies met with Department officials and reported that the SDO's assertions of endorsement and support were inaccurate, ACICS contacted at least one of the accrediting agencies via email. Ms. Michelle Edwards, the President and CEO of ACICS, sent an email to the Executive Director of the Distance Education Accrediting Commission. It stated:

¹⁰ Decision of the Education Secretary, Betsy DeVos, regarding ACICS recognition, November 21, 2018 https://www.insidehighered.com/sites/default/server_files/media/ACICS%20FAD%2011.21.2018.pdf

¹¹ Letters from Senators Warren, Blumenthal, Brown and Durbin to nine accreditors, October 2018, <https://www.warren.senate.gov/imo/media/doc/Accreditors%20Combined.pdf>

¹² Exhibit 1: NECHE response to letter from Senators Warren, Durbin, Blumenthal, Brown to Senator Warren, October 31, 2018

¹³ Ibid.

¹⁴ Exhibit 2: WSCUC response to letter from Senators Warren, Durbin, Blumenthal, Brown to Senator Warren, October 18, 2018

“The Department erroneously reported ACICS had won the support of nine other accrediting organizations, including your organization. To be clear, in our submission to the Department, ACICS submitted an exhibit that referred to the agency affiliations of letter writers, but did not suggest that the agency itself was endorsing ACICS as part of that letter.”¹⁵

This information raises new questions regarding ACICS’s petition for recognition, including whether or how the Department made a simple “editorial error,”¹⁶ or whether ACICS may have provided incomplete, unclear, or misleading information that resulted in the Department relying on false or incorrect information in the SDO recommendation and in the final decision. It is impossible to make this determination without reviewing the full submission that ACICS made to the Department for consideration, including any accompanying exhibits. If your November 21, 2018 recognition decision was made on false pretenses, it would be legally and procedurally invalid.

The Department Continues to Cite Misleading Information about ACICS

According to the recent recognition decision, “the record shows that ACICS is ‘accepted’ for the purpose of §602.13 by numerous educators, as well as” five agencies: ACOTE, ARRT, CAPTE, ABHES, and ACEN. In the October 15 “correction” to the initial SDO report, the Department stated that, “Each of these is a widely accepted accreditor in its own right, and its support of ACICS as a peer in this highly scrutinized area serves as important evidence of ACICS’s wide acceptance.”¹⁷

To substantiate these claims of endorsement, we contacted each of these five agencies that you cited in your final decision. Our inquiry revealed that the Department is once again misleading the public when it claims that ACICS is accepted by these five agencies.

In fact, four out of five of these agencies carefully avoided asserting support, endorsement, or unequivocal acceptance of ACICS as a peer. All of them were also clear that they had not reviewed ACICS’s standards, policies, or procedures, or how ACICS makes their decisions to grant or deny accreditation – acceptance of which is prescribed by the text of §602.13.¹⁸ At best, these organizations simply factually acknowledge that ACICS is currently recognized by the Council for Higher Education Accreditation (CHEA) – the membership trade association of accrediting agencies.

¹⁵ Exhibit 3: DEAC response to letter from Senators Warren, Durbin, Blumenthal, Brown, October 25, 2018, including copy of an October 5, 2018 email from ACICS to DEAC.

¹⁶ Leonor, Mel. “Education Department overstated endorsements of for-profit college accreditor.” *Politico Pro*. Published October 4, 2018 and updated October 5, 2018. <https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214>

¹⁷ Exhibit 15: SDO’s planned correction, as reported in *Politico*, October 5, 2018, Mel Leonor “Education Dept. overstated endorsements of for-profit college accreditor” <https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214>

¹⁸ 34 CFR 602.13 - Acceptance of the agency by others. The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by - (a) Educators and educational institutions; and (b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.

ACOTE, for example, indicated that they “recognized ACICS as an institutional accreditor” because ACICS was recognized by a third organization, CHEA, but drew no conclusions about ACICS's standards, policies, or procedures, as required by §602.13, and did not indicate that they supported or accepted ACICS as a peer.¹⁹ CAPTE and ARRT made similar statements.^{20 21} ARRT’s statement simply indicated that “since ACICS was recognized by CHEA, it was included in the list of accreditors recognized by ARRT.” And although ACEN was the only one of the five who explicitly stated that they accept ACICS, they did not provide any justification other than that ACICS is recognized by CHEA.²²

ACOTE also revealed that they “mak[e] no separate judgment of ACICS beyond accepting the CHEA recognition.” ACOTE went even further to say, **“We do not interpret the ‘widely accepted’ standard, in 34 CFR 602.13. ACOTE is not in the position to judge if another accrediting agency is ‘widely accepted’ as defined in federal law and regulation.”**²³

ARRT, likewise, stated that **“ARRT does not make statements regarding how ‘widely accepted’ a particular accreditor is.”** These responses directly contradict the Department’s final decision that states that these accrediting agencies widely accept ACICS as a peer.

Moreover, in response to the Congressional inquiry, ABHES provided a December 2017 letter that it sent to the Department in response to an ACICS request to send a letter of endorsement. This letter noted only that “ABHES acknowledges the important role institutional accreditation, including by ACICS, plays in the continuous review of institutions ... ABHES is aware of new initiatives ACICS has undertaken to strengthen its review process.” This is not even a vague statement of acceptance. ABHES was even more explicit in their response to our inquiry, indicating that, **“[i]t is not ABHES practice to endorse other organizations.”**²⁴

In fact, documents provided by ABHES on October 25, 2018 reveal that the accreditor went out of its way to avoid endorsing or indicating its support for ACICS. ABHES sent its letter to the Department only after receiving a verbal request and a template letter from ACICS encouraging the use of prepared talking points.²⁵ We now know that ABHES made significant modifications to this letter before sending it to the Department.

Notably, ABHES deleted a sentence proposed by ACICS that said, “I can attest that the work of ACICS as an agency is valuable as evidenced by our review of the curriculum, instruction, and preparation of these ACICS programs.”²⁶ ABHES replaced this sentence with a statement that simply said that “ABHES is aware of new initiatives ACICS has undertaken to strengthen its review process as described in its *Memoranda to the Field*.”²⁷

¹⁹ Exhibits 11.1, 11.2, 11.3, and 11.4: ACOTE response to congressional inquiry, November 14, 2018

²⁰ Exhibits 12.1 and 12.2: CAPTE response to congressional inquiry, November 19, 2018

²¹ Exhibits 13.1 and 13.2: ARRT response to congressional inquiry, November 19, 2018

²² Exhibits 14.1, 14.2 and 14.3: ACEN response to congressional inquiry, November 15, 2018

²³ Ibid.

²⁴ Exhibits 9.1, 9.2, 9.3: ABHES response to congressional inquiry, October 25, 2018

²⁵ Exhibit 9.2: ABHES response to congressional inquiry attachment: ACICS template to ABHES

²⁶ Exhibit 9.3: ABHES response to congressional inquiry attachment: ABHES letter to Department of Education.

²⁷ Ibid.

In ABHES's response to questions about why the Department referenced them as one of the accreditors that endorsed ACICS, the agency responded:

“We do not know for certain why the U.S. Department of Education referenced ABHES but perhaps the Department may have viewed the ABHES statement regarding continuing programmatic eligibility as an endorsement.”²⁸

In sum, neither of these statements nor ABHES's letter come close to showing that ACICS “demonstrate[s] that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted...”²⁹ The statements by the five accreditors say nothing about ACICS's standards, policies, or procedures nor do they make any mention of ACICS's decisions regarding granting or denying accreditation of institutions. The Department's overstatement discredits the entire review and recognition process and casts significant doubt on the conclusion that ACICS has met the other 18 federal criteria.

Questions

These deeply troubling findings confirm the initial reporting that the SDO – either knowingly or unknowingly – cited or relied on false and misleading information to reach the conclusion that ACICS's federal recognition should be restored. Our Congressional inquiry reveals new information that calls into question how and why the Department erroneously claimed that ACICS had the support of nine other accreditors, and also reveals that even after correcting this “editorial error,”³⁰ the Department continues to cite false information in its recommendation and decision to restore ACICS's federal recognition. These major and ongoing falsehoods raise serious questions about the legitimacy of the entire reinstatement process and critically taint your decision.

We request that you rescind your decision to re-recognize ACICS, order the SDO to issue a new recommendation, and respond to our October 18, 2018 letter by releasing the requested documents. To assist us in resolving these matters, we also ask that you provide us with the following information **by January 4, 2019**:

1. All ACICS documents submitted to the Department as part of the evaluation process for restoring recognition, including the Part II documents, application for initial recognition in 2017, and 2018 Supplement.
2. An explanation regarding whether the Department found that ACICS was in compliance with federal requirements for accreditation as of December 12, 2016. If not, an explanation of what legal authority provides the Department the ability to disregard ACICS' noncompliance with recognition standards over the past two years.

²⁸ Ibid.

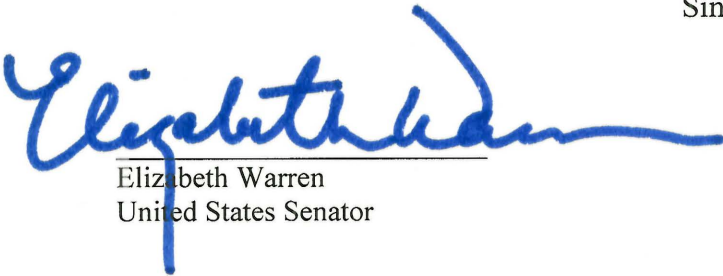
²⁹ 34 CFR 602.13

³⁰ Ibid.

3. A full and complete accounting of the “editorial error”³¹ that resulted in the initial Department citation of false information from accrediting agencies regarding their endorsement of ACICS.
4. Copies of any draft recommendations prepared prior to publication of the SDO recommendation with the “editorial error.”
5. Any emails or other communications to or from Department personnel, including any communications between Department personnel and ACICS, regarding endorsement by ACICS's peer accreditors or this error in the initial SDO recommendation.
6. Any communications to or from Department personnel, including any communications between Department personnel and ACICS, regarding endorsement by ACICS' peer accreditors or this corrected recommendation.
7. An updated list of all remaining schools accredited by ACICS, as of December 11, 2018.
8. Descriptions and copies of any communications with career staff regarding the Department’s decision to re-recognize ACICS. If career staff were not consulted, why not?
9. Any additional data and evidence ACICS submitted after it’s submission of the Part II documents and the 2018 Supplement.
10. An explanation of whether ACICS submitted any evidence or documents, including indicating the number of pages, that are the same as those submitted for the draft staff analysis in the initial recognition application. If yes, did the Department consider the staff analysis of those exhibits? If not, why not?

Thank you for your prompt assistance in this urgent matter.

Sincerely,



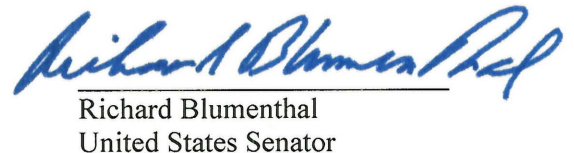
Elizabeth Warren
United States Senator



Suzanne Bonamici
Member of Congress

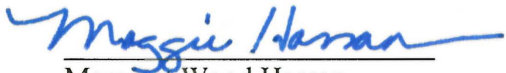


Richard J. Durbin
United States Senator



Richard Blumenthal
United States Senator

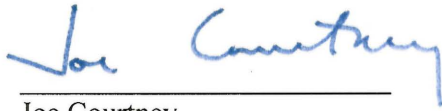
³¹ Ibid.



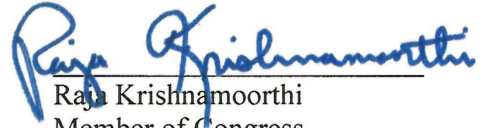
Margaret Wood Hassan
United States Senator



Sherrod Brown
United States Senator



Joe Courtney
Member of Congress



Raja Krishnamoorthi
Member of Congress



Mark Takano
Member of Congress



Mark DeSaulnier
Member of Congress



Lisa Blunt Rochester
Member of Congress

Appendix

Exhibit Number	Description
<p>N/a</p> <p>Link:</p> <p>https://www.warren.senate.gov/imo/media/doc/Accreditors%20Combined.pdf</p>	<p>October 18, 2018 letters sent from Senators Warren, Durbin, Blumenthal, Brown to:</p> <ul style="list-style-type: none"> • New England Commission of Higher Education (NECHE) • Western Association of Schools and Colleges Senior College and University Commission (WSCUC) • Distance Education Accrediting Commission (DEAC) • Accrediting Council for Continuing Education & Training (ACCET) • Accrediting Commission for Community and Junior Colleges (ACCJC) • Accrediting Commission of Career Schools and Colleges (ACCSC) • Middle States Commission on Higher Education (MSCHE) • Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) • Accrediting Bureau of Health Education Schools (ABHES)
Exhibit 1	NECHE response to letter, October 31, 2018
Exhibit 2	WSCUC response to letter, October 19, 2018
Exhibit 3.1	DEAC response to letter, October 25, 2018
Exhibit 3.2	DEAC attachment as part of response to letter, October 25, 2018: Email from ACICS to DEAC, October 5, 2018
Exhibit 4	ACCET response to letter, October 23, 2018
Exhibit 5	ACCJC response to letter, October 18, 2018
Exhibit 6	ACCSC response to letter, November 6, 2018
Exhibit 7	MSCHE response to letter, October 24, 2018
Exhibit 8	SACSCOC response to letter, October 25, 2018
Exhibit 9.1	ABHES response to letter, October 25, 2018
Exhibit 9.2	ABHES attachment as part of response to letter, October 25, 2018: Template sent from ACICS to DEAC
Exhibit 9.3	ABHES attachment as part of response to letter, October 25, 2018: Letter sent from ABHES to the Department of Education, December 2017
Exhibit 10	<p>November 13, 2018 letters sent from Senators Warren, Durbin, Blumenthal, Brown to:</p> <ul style="list-style-type: none"> • Accreditation Council for Occupational Therapy Education (ACOTE) • Commission on Accreditation in Physical Therapy Education (CAPTE)

	<ul style="list-style-type: none"> • American Registry of Radiologic Technologists (ARRT) • Accreditation Commission for Education in Nursing (ACEN)
Exhibit 11.1	ACOTE response to letter, November 14, 2018
Exhibit 11.2	ACOTE attachment as part of response to letter, November 14, 2018: Letter sent from ABHES to the Department of Education, December 20, 2017
Exhibit 11.3	ACOTE attachment as part of response to letter, November 14, 2018: Letter sent from ACICS to ABHES, December 18, 2017
Exhibit 11.4	ACOTE attachment as part of response to letter, November 19, 2018
Exhibit 12.1	CAPTE response to letter, November 19, 2018
Exhibit 12.2	CAPTE attachment as part of response to letter, November 19, 2018: Letter sent from CAPTE to the Department of Education, December 22, 2017; Email sent from ACICS to CAPTE, December 18, 2017; Template sent from ACICS to CAPTE
Exhibit 13.1	ARRT response to letter, November 19, 2018
Exhibit 13.2	ARRT attachment as part of response to letter, November 19, 2018: Letter sent from ARRT to ACICS, January 18, 2018; Email correspondence between ACICS and ARRT, December 18-27, 2017; Letter sent from ARRT to Department of Education, December 20, 2017; Email correspondence between ACICS and ARRT, December 18-27, 2017; Letter sent from ARRT to ACICS, January 2, 2018; Email correspondence between ACICS and ARRT, January 18, 2018
Exhibit 14.1	ACEN response to letter, November 15, 2018
Exhibit 14.2	ACEN attachment as part of response to letter, November 15, 2018: Letter sent from ACEN to Department of Education, December 20, 2017
Exhibit 14.3	ACEN additional response to letter, November 16, 2018
Exhibit 15	Education Department's planned correction of initial SDO report, as reported by Politico on October 5, 2018: https://www.politico.com/newsletters/morning-education/2018/10/05/education-dept-overstated-endorsements-of-for-profit-college-accreditor-363214