



March 1, 2018

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U.S. Department of Education  
400 Maryland Ave., SW  
Washington, D.C. 20202

Delivered via email to: [ThirdPartyComments@ed.gov](mailto:ThirdPartyComments@ed.gov)

*This comment is in response to the Federal Register Notice published on January 24, 2018, as updated on February 22, 2018, by the U.S. Department of Education (Department) Office of Postsecondary Education titled “Solicitation of Third-Party Comments Concerning the Performance of Accrediting Agencies.” The Century Foundation is a nonprofit organization that works to advance students' rights with respect to educational opportunity. As part of our mission, we advocate on behalf of enhancing student protections and file comments in rulemaking and federal regulatory proceedings to inform the public and policymakers on past practices of accreditors and institutions of higher education.*

## **Introduction**

The Century Foundation submits this comment in response to the Solicitations while noting that it maintains the objection to the Department’s closing of the public comment period before The Century Foundation and other members of the public had the opportunity to adequately review and comment on the Accrediting Council for Independent Colleges and Schools’ (ACICS) application and exhibits of approximately 20,000 pages. The Department also maintains the position, as indicated in responses to FOIA requests, and by Counsel in oral arguments before the U.S. District Court for the Southern District of New York, that ACICS’s application is not in final form and that The Century Foundation has only received “the most recent” version of the application. The Century Foundation has the right to comment on the final version of the application for the administrative record, and the staff report that is sent to NACIQI should reflect the comments on the final application, not an incomplete submission.

A declaration regarding The Century Foundation’s efforts to review the material provided by the Department is attached.

This comment is focused on the ACICS application for “initial recognition,” and whether it shows that ACICS has come into compliance with its standards since being terminated on December 25, 2016. The Century Foundation thus submits this abbreviated analysis of ACICS’s application and not of the severe

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non-compliance of its past performance, which has been well-documented in the Department's 2016 Staff Report and decisions by the Senior-Designated Official (SDO) and the Secretary.

## **I. ACICS Accreditation Is Not Widely Accepted**

For an accrediting agency to be recognized by the Secretary, it “must demonstrate that its standards, policies, and decisions to grant or deny accreditation are widely accepted in the United States” by (1) educators, (2) educational institutions, (3) licensing bodies “in the professional or vocational fields” trained by ACICS institutions, (4) practitioners in those fields, and (5) employers in those fields.<sup>1</sup>

Our findings regarding each category are below, based on a review of some of the exhibits released by the Department.

***Educators:** As far as we can tell, the ACICS application does not point to support from a single educator who does not have a formal affiliation with ACICS.*

To demonstrate that its decisions are “widely accepted in the United States” by educators, ACICS should provide evidence that educators who have *not* been employed by ACICS or by ACICS-accredited institutions rely on the agency's decisions or otherwise approve of its policies. In our review of the evidence presented to the Department by ACICS, we found no educators without ties to ACICS-accredited institutions or to ACICS as an evaluator employed by the agency.<sup>2</sup>

ACICS claims to have submitted “more than 65 letters of support from educators at ACICS-accredited institutions and from educators outside of the agency's accredited programs or institutions.”<sup>3</sup> Our examination of those 65 letters, in Exhibit G, indicates that they come from just thirteen domestic institutional brands, and each brand is accredited by ACICS. Twenty-eight of the letters alone come from the ACICS-accredited Brightwood College and Virginia College, both owned by Education Corporation of America. Another sixteen come from Miami Regional University and California International Business University, both ACICS-accredited institutions. There are four letters from faculty at foreign schools accredited by ACICS (which, even if not accredited by ACICS, would not meet the requirement that they demonstrate acceptance “in the United States.”)

A separate Exhibit H includes four letters from educators who work at non-ACICS accredited schools. However, all indicate that they have been engaged by ACICS as evaluators (a role that is paid), and two of them have been ACICS commissioners (one of them did describe herself as “an educator unaffiliated with an ACICS-accredited institution”).

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<sup>1</sup> 34 CFR 602.13.

<sup>2</sup> Evaluators participating on visiting team receive, in addition to reimbursement of travel expenses, an honorarium of \$250 or \$350 per day “to cover travel time, time on the premises, and time involved in preparing the formal report to the Council.” See “Honorariums,” ACICS website, <http://www.acics.org/evaluators/content.aspx?id=2432>.

<sup>3</sup> Appendix A.

***Educational institutions:*** *Support for ACICS is demonstrated only from ACICS schools.*

In the narrative statement, ACICS claims to have provided “letters of support...from accredited institutions stating that they acknowledge ACICS policies, procedures and accreditation decisions.” The list, however, includes only institutions accredited by ACICS, while the federal requirement is clearly seeking evidence of acceptance beyond the agency’s own membership.

Further, the “letters” that ACICS claims were provided in Exhibit 27 were actually just requests to be added as signers onto a form letter. And the list of sixty-four signers actually represents only a few institutions. Two individuals from Education Corporation of America signed thirty-four times between them. Twelve signers are from a single college chain, Florida Career Colleges; three are from Southern States University, and two from San Diego Global Knowledge University (one by President and another by Chief Academic Officer, father and son, respectively). And, again, they are all ACICS-accredited institutions.

“To augment Exhibit 27,” ACICS later submitted “additional letters of support.”<sup>4</sup> But all of the additional letters provided in Exhibits J and K are from institutions with recent or current affiliations with ACICS: twenty-one of the letters from currently-accredited schools and nineteen from institutions that recently withdrew their recognition in order to gain new accreditation. There is no evidence of acceptance of ACICS by institutions that do not have a recent or current relationship with ACICS.

ACICS also points to articulation agreements as evidence of support from educational institutions (Exhibit M). While we have not had time to analyze those agreements in detail, some of them appear to be agreements between two ACICS-accredited institutions, such as an agreement between Sumner College and the California International Business University. Others involve entities that are not Title IV institutions, such as international language institutes. There is a twenty-four page list of colleges that have articulation agreements with the University of Phoenix, with no detail about the content of those agreements. And some documents are lists of courses from non-ACICS schools accepted for credit by ACICS schools, but with no indication if there is any reciprocal treatment.

***Licensing bodies:*** *We found only one occupational licensing body that supports ACICS.*

The regulations require an accrediting agency to demonstrate that its decisions are accepted by licensing bodies in the professional or vocational fields for which the accredited institutions provide training.

For ACICS, relevant licensing bodies would include those for cosmetologists, occupational therapists, physical therapists, nurses, dental assistants and hygienists, pharmacy technicians, and many more. Across fifty states and the District of Columbia, therefore, there must be hundreds of occupational licensing agencies that should be familiar with the ACICS role in accrediting institutions. In the documents we have been able to review, we found only one licensing body that supported ACICS, the Court Reporters Board of California. It was not, however, a letter supporting the current application but

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<sup>4</sup> Appendix A, ACICS Application for Initial Recognition.

instead was a letter to the Senior Department Official regarding re-recognition of ACICS by the Secretary in 2016.

In lieu of licensing body support, ACICS is asking the Department to consider programmatic accreditation as evidence, since “[p]rogrammatic accreditation is required for some educational programs offered by ACICS-accredited institutions in order for graduates of those programs to sit for state licensing exams and to obtain licensure/employment in the field.” ACICS says that “[s]everal of such programmatic accreditors accept ACICS as an accrediting agency for purposes of accreditation of such programs because ACICS is recognized by the Council for Higher Education Accreditation (CHEA) as an alternative to recognition by the U.S. Department of Education (ED).”

The idea of counting the programmatic accreditors as evidence of wide acceptance because they rely on CHEA, which recognizes ACICS, is a bridge too far. It is also a bridge without a foundation, because CHEA decisions relating to ACICS have been under advisement or deferred by its Board of Directors four times, dating back to April of 2016.<sup>5</sup> ACICS was last approved for recognition by CHEA in 2012 for a three-year period, meaning that ACICS is, at best, recognized by CHEA in a provisional capacity.

ACICS also provided other letters that relied on CHEA as a bridge: the American Council for Occupational Therapy Education (ACOTE) in Exhibit Q; the Commission on Accreditation in Physical Therapy Education (CAPTE) in Exhibit R; the Accrediting Bureau of Health Education Schools (ABHES) in Exhibit S; and the Accrediting Commission for Education in Nursing (ACEN) in Exhibit T. ACICS also included a letter of support from the American Registry of Radiologic Technologists (ARRT), which is neither recognized by the Department or CHEA (Exhibit U).

ACICS also sought support from state authorizing agencies, which do not likely meet the definition of “licensing bodies...in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.” There, too, however, ACICS has come up nearly empty-handed. One agency in Ohio provided a supportive letter, while others refused.<sup>6</sup> One of the letters submitted to the Department by ACICS, from the Illinois Board of Higher Education, was actually a refusal to submit any sort of letter supporting ACICS (Exhibit X).

***Practitioners:** Nearly every letter of support seems to have been written by someone on the ACICS payroll.*

To gain recognition by the Secretary, ACICS must demonstrate that its decisions are relied upon by “practitioners...in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.”

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<sup>5</sup> “Accrediting Council for Independent Colleges and Schools (ACICS): Recognition Decision Summar,” Council for Higher Education Accreditation, September 25, 2017, <http://www.chea.org/userfiles/Recognition/ACICS.pdf>

<sup>6</sup> David Halperin, “Discredited Accreditor ACICS Fails to Get Many State Endorsements”, Republic Report, February 27, 2018, <https://www.republicreport.org/2018/discredited-accreditor-acics-fails-get-many-state-endorsements/>

In Exhibits AA, AB, AC, AD, and AE, ACICS includes lists of or letters from practitioners who work on ACICS committees and as evaluators, as well as some people who are employed by ACICS-accredited schools. For example, the owner of a massage salon includes in his bio on his website that “Since 2006, [he] has been enlisted by the Accreditation Council of Independant [sic] Colleges and Schools (ACICS) to visit massage programs around North America for evaluation and accreditation purposes.” Previously he was the director of the Massage Therapy Program at the ACICS-accredited Salter College.

It is possible that there are people on the list who are not paid evaluators or employees of ACICS schools, but if that is the case, ACICS has not indicated who they are.

ACICS’s accreditation decisions cannot be considered “widely accepted” if the only evidence of such acceptance is people who are involved in those decisions.

***Employers:** Except in relation to a canine studies program, we could not find a single employer who is attesting to the rigor of ACICS’s standards or to its oversight of quality.*

To gain recognition by the Secretary, ACICS must demonstrate that its decisions are relied upon by “employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.” ACICS references six exhibits as evidence of wide acceptance by employers. Under Exhibit 43, ACICS references five letters from employers, four supporting Brightwood Colleges, and one supporting Virginia College, all schools owned by Education Corporation of America. While these institutions are accredited by ACICS, there is no mention of the accreditor in the letters, nor is there any indication of acceptance of ACICS as a reliable authority regarding the quality of education, other than support of these institutions.

Exhibit AG includes dozens of pages of sign-in sheets of advisory board meetings for different programs, many dating back to before loss of recognition. There are dozens of pages of Powerpoint slides, advisory board member info, meeting minutes, but no explicit letters of support from employers who happen to sit on Advisory Boards for different programs/schools. One specific communication relates to a dispute regarding employer representation on a school’s advisory committee; it is not clear how that relates to demonstration of employer support for ACICS.

Exhibit AH shows that four participants in a survey conducted by ACICS identified themselves as employers. There is no indication of who the employers are, or what views they have of accreditation or of ACICS.

ACICS is seeking to include, as employer support *of ACICS*, thirty-eight mostly positive comments that employers made about employees who had graduated from ACICS-accredited institutions. The comments appear to have been generated from the ACICS Placement Verification process, which involved 55,000 graduates in the 2016-2017 reporting period.<sup>7</sup> It is unclear whether this reflects a response rate from employers of less than 0.007 percent, or if this is the rate of satisfied employers, or something else.

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<sup>7</sup> Appendix A, ACICS Application for Initial Recognition.

The 110 pages labeled Exhibit AK is mostly comprised of employer assessments of specific graduates hired from Empire College. Some other letters support schools, but without referencing accreditation. Three letters, all employers of graduates from a school that specializes in canine studies, mentions a concern about the school's potential loss of accreditation due to ACICS's lack of federal recognition.

## **II. ACICS Does Not Have Public Members as Required by Law**

To be recognized by the Secretary of Education, an accrediting agency must be able to demonstrate that it has "Representatives of the public on all decision-making bodies,"<sup>8</sup> and that at least one-seventh of the agency's decision-making body "consists of representatives of the public."<sup>9</sup>

On its website, ACICS lists a total of ten board members, of which it identifies five as either "public" or "public/academic." None of the five qualify as "representatives of the public." Instead, the exhibits provided to the Department, along with other sources identified below, indicate that all five are frequent part-time consultants to ACICS, engaged as evaluators,<sup>10</sup> and therefore are not representatives of the public. Some, in addition, have long histories as industry stakeholders.

One board member identified as a "Public" representative spent an entire career as a school owner and operator, and in retirement is now serving as a frequent participant in ACICS visiting teams. She co-founded the American Business & Fashion Institute in 1973, selling it in 1999 and then serving as president of Education Management Corporation (EDMC)'s Art Institute of Charlotte for the next seven years, from which she retired in 2006. According to the resume submitted to ACICS (Exhibit 33), she "Completed ACICS evaluation team chair training October 2006 and since that time have [sic] led teams, completed reports, and worked with the Accreditation Coordinators as required."

A second board member identified as "Public" has done evaluator work for ACICS since 1992. According to the resume she submitted to the Department, she has participated "in over 500 site visits as specialist evaluator and/or team leader." She lists no other jobs or roles: her entire paid profession is as an evaluator on accreditation teams.

A third board member, identified as "Public/Academic," says she is a frequent evaluator consultant to ACICS, participating on "multiple ACICS site team visits." Further, she submitted a letter of support of ACICS (Exhibit 30), describing her role as "educator," not as a representative of the public.

A fourth board member, listed on the ACICS website as "Public, Academic," is identified on her LinkedIn profile as ACICS "Evaluator/Commissioner," indicating that she, too, views the role as a part-time contractor position involving her in accreditation site visits. Her other past and current employment is not clear because the resume provided to the Department does not match with other

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<sup>8</sup> 34 CFR 602.15(a)(5).

<sup>9</sup> 34 CFR 602.14(b)(2).

<sup>10</sup> According to the ACICS website, evaluators participating on visiting teams are compensated at a rate of \$250 to \$350 a day.

sources. Her current employment, according to the resume, is as “Associate Vice President of Talent Management & Director of Leadership Development” at Montgomery County Community College (MCCC) in Pennsylvania, starting in March 2014. The MCCC website, however, says she is “director of leadership development and talent management,” and her hiring was announced a year after her resume says it began. If that was a typo, there are multiple. The LinkedIn profile shows her starting a job in June 2012 as Associate Faculty in the Finance Department at Post University (a for-profit college in Connecticut). The resume provided to the Department does not appear to list Post University as an employer at all (there are some redactions, so we cannot be sure). Both the LinkedIn profile and the resume show prior employment as an associate faculty member with Rosemont College. However, the LinkedIn profile says this employment was between 2006 and 2009, while the resume says it began in 2009 and ended in 2011.

The fifth board member, described as “Public/Academic,” is a former provost at a public university. Now retired, he has earned several thousand dollars from ACICS, according to the ACICS Form 990s filed with the IRS and available on Guidestar.org.

### **III. ACICS Does Not Have Effective Mechanisms for Evaluating Institutions**

To be recognized by the Secretary, an agency must demonstrate that its “standards...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>11</sup> In addition, the agency “must have effective mechanisms for evaluating an institution’s or program’s compliance...”<sup>12</sup>

There is evidence in the exhibits and in the public record that ACICS frequently takes action when it receives notification from a government agency about a possible problem. However, to have “effective mechanisms” and to be a “reliable authority” means that the agency must be able to ferret out problems itself and then take action, not wait for a government agency to act. In our review of the evidence so far we do not find that ACICS has demonstrated that it is capable of leading rather than following, and it certainly has not done so for the past two years.

When ACICS the accrediting agency has taken adverse actions over the past year, it has been too late and well after federal and state agencies moved to bring charges or enforcement actions against institutions. For example, on April 20, 2017, ACICS brought an action to withdraw accreditation by a suspension action against the main campus and seven branch campuses of Illinois-based Computer Systems Institute (CSI). This was over a year after the Department announced its decision to deny recertification to CSI on January 29, 2016.<sup>13</sup> The Department even noted at the time that its decision to end CSI’s eligibility for Title IV Federal Student Aid funds was due to the Department’s findings that “CSI submitted false job

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<sup>11</sup> 34 CFR 602.16(a).

<sup>12</sup> 34 CFR 602.17.

<sup>13</sup> “U.S. Department of Education Takes Enforcement Against Two School Ownership Groups,” U.S. Department of Education website, February 1, 2016, <https://www.ed.gov/news/press-releases/us-department-education-takes-enforcement-against-two-school-ownership-groups>.

placement rates to its students, ED, and its national accreditor, the Accrediting Council for Independent Colleges and Schools.”<sup>14</sup> Even after these findings were released, ACICS did not end CSI’s accreditation for over a year while it had knowledge that students were defrauded.

ACICS also made the decision on August 4, 2017 to renew accreditation of three American National University campuses in South Bend, IN, Pikeville, KY, and Florence, KY. This was even after ACICS had full knowledge that in 2016, the Kentucky Court of Appeals upheld a \$147,000 sanction by the Franklin Circuit Court against American National University for failing to comply with a subpoena issued by the Kentucky Attorney General during an investigation of the Kentucky Consumer Protection Act.<sup>15</sup> The Kentucky Attorney General brought civil fraud charges against American National University for violating the Kentucky Consumer Protection Act by advertising misleading information about the job success of its graduates. ACICS has still failed to take any meaningful action to address these issues while it continues to accredit American National University, other than issuing a “compliance warning.”

Globe University and the Minnesota School of Business were sued by the Minnesota Attorney General in 2014 for advertising programs that lacked the credentials graduates needed to qualify for jobs in their fields and for misrepresenting the transferability of credits to other institutions. These legal violations occurred even while ACICS placed the company on its “Honor Roll” in 2012. Remarkably, ACICS waited until September 14, 2016 to even issue a show-cause directive to ACICS.<sup>16</sup> The Hennepin County District Court ruled in September, 2016 that Globe University in Minnesota and the Minnesota School of Business committed fraud and the Department denied recertification of Globe University and the Minnesota School of Business’s participation in Title IV Federal Student Aid programs on Dec. 21, 2016. However, even after the court ruling of fraud and the federal government denial of recertification, ACICS continued to accredit Globe and the Minnesota School of Business. On December 21, 2016, ACICS merely continued the show-cause directive for review during the Winter 2017 cycle.<sup>17</sup>

Exhibit 135 provides a sobering window into the inadequacy of ACICS’s accreditation mechanisms. The Bay Area College of Nursing (BACN) was initially accredited by ACICS in 2013. ACICS made that decision despite problems that had been raised by the State Board of Vocational Nursing (SBVN), a licensing agency, ever since the school’s opening in 2007.<sup>18</sup> In February 2016, the SBVN prohibited any new enrollments in BACN’s nursing program due to problems that it had identified in the program. The

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<sup>14</sup> “Notice of Intent to Deny Recertification to Computer Systems Institute (CSI), Federal Office of Student Aid, <https://studentaid.ed.gov/sa/about/announcements/csi>.

<sup>15</sup> Tom Kenny, “AG Wins Appeal Upholding Sanctions Against American National of KY,” ABC36 News, October 19, 2017, <https://www.wtvq.com/2017/10/19/ag-wins-appeal-upholding-sanctions-american-national-ky/>. (The U.S. Supreme Court denied American National University’s petition for certification in October 2017.)

<sup>16</sup> Letter to Mr. Terry Myre, “Show-Cause Directive,” September 14, 2016, <https://www.acics.org%2FWorkArea%2FDownloadAsset.aspx%3Fid%3D6778&usg=AOvVaw1rBHLSu-fsT5MTeEhHE0DE>.

<sup>17</sup> Letter to Mr. Terry Myre, “Continued Show-Cause Directive,” December 21, 2016, [acics.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=6827&libID=6821](https://www.acics.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=6827&libID=6821).

<sup>18</sup> Memo of Donna G. Johnson to the members of the Board of Vocational Nursing and Psychiatric Technicians, California Department of Consumer Affairs, August 12, 2016, [http://www.bvnpt.ca.gov/about\\_us/meetings/materials/20160825\\_18d1.pdf](http://www.bvnpt.ca.gov/about_us/meetings/materials/20160825_18d1.pdf).



very next month, in March 2016, an ACICS visiting team reported nothing about the licensing board's actions or its finding, but instead faults BACN for having an inadequate advisory board. In May, ACICS took action to *continue* BACN's accreditation until August. By August, the licensing board had decided to withdraw approval for the school's nursing program. The school now appears on ACICS's list of closed institutions.<sup>19</sup>

The BACN is apparently not an isolated incident. In September 2017, less than six months ago, Department staff flagged that ACICS had, "just in the last day or two," approved new programs for a campus of the Delta Career Education Corporation location that had ceased taking new enrollments.<sup>20</sup>

Moreover, ACICS cannot be considered an effective accrediting agency in its implementation of the regulations if it does not systematically consider external risks to its institutions that present possible existential threat. Its own loss of recognition presented such a risk for all of the campuses it accredited as of the date of the final decision. Yet we have been unable to find any documentation in the agency's application that it required all institutions to submit teach-out agreements immediately (beyond the Education Department's requirements to submit them to Federal Student Aid), that it evaluated which institutions would likely be unable to find accreditation with another agency in order to place them on heightened monitoring, or that it otherwise systematically reviewed all institutions with respect to this specific risk.

#### **IV. The Department May Not Have the Legal Authority to Consider ACICS's Application**

The Department grants two types of recognition for accrediting agencies of institutions of higher education, which are for "initial" or "continued" recognition.<sup>21</sup> Institutions of higher education must be accredited by a recognized agency to gain eligibility for Title IV federal student aid funds. The Accrediting Council for Independent Colleges and Schools (ACICS) is an agency seeking initial recognition due to its loss of recognition by the Department in a decision letter dated September 22, 2016 that was appealed by ACICS and upheld by the Secretary in a December 12, 2016 letter. Any accrediting agency seeking initial recognition by the Department must demonstrate that it has been conducting accrediting activities in compliance with federal standards for recognition for at least two years prior to the application for initial recognition.<sup>22</sup>

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<sup>19</sup> "Institution/Campus Closings," ACICS website, <http://www.acics.org/commission%20actions/content.aspx?id=1476>.

<sup>20</sup> Email from Mecca, Shari, Multi-Regional and Foreign School Participation Division, Federal Student Aid, to Rob Bennett, Michael Frola, and Julie Arthur, September 15, 2017. Included in emails released by Michael Stratford, "Inside a for-profit college accreditor's bid for new life," March 1, 2018. <https://www.politicopro.com/education/article/2018/03/inside-a-for-profit-college-accreditors-bid-for-new-life-372634>.

<sup>21</sup> 34 CFR 602.30(a).

<sup>22</sup> 34 CFR 602.12(a): "An agency seeking initial recognition must demonstrate that it has – ... (2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition."

Upon denying ACICS's appeal, the Secretary conducted a de novo review and found that "Because of the nature and scope of ACICS's pervasive non-compliance, I further conclude that ACICS is not capable of coming into compliance within 12 months or less, even if I renewed its recognition for an additional 12 months."<sup>23</sup>

ACICS acknowledged to the U.S. District Court for the District of Columbia in February 2017 that it was not in compliance,<sup>24</sup> and the agency did not finalize and submit its new standards for review to institutions until September 14, 2017. For this reason, the Department does not have the authority to consider an application for initial recognition by ACICS until at least September 14, 2019, the first date at which ACICS will have the opportunity to attempt to demonstrate that it will be in compliance for two years.

## **V. The Department May Have Violated Procedural Requirements**

On December 1, 2017, the Department of Education's Accreditation Group sent ACICS a letter indicating that it had "determined that ACICS had not yet provided sufficiently persuasive evidence from educators, educational institutions, licensing bodies, practitioners, and employers to demonstrate compliance with" the wide-acceptance criteria under 34 CFR 602.13.<sup>25</sup> When the staff make such a determination with respect to the regulations under 34 CFR 602.10, .11, .12, or .13., the regulations require the staff to "return" the agency's application and recommend that the agency "withdraw its application and reapply" with a stronger application.<sup>26</sup>

From the exhibits that have been released by the Department, it appears that, contrary to the procedures laid out by regulation, ACICS has been given the opportunity to simply keep adding additional materials to its application. It is difficult to tell from the available record what process was followed, but it may be that ACICS has been treated preferentially and contrary to the established procedure.

## **Conclusion**

It is clear from the record that ACICS does not meet the legal requirements for recognition by the Secretary. The agency has not demonstrated that its accreditation decisions are widely recognized by educators, schools and employers across the United States. The evidence shows that ACICS cannot be relied upon by the Secretary to make decisions that protect students and taxpayers. Further, not only has

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<sup>23</sup> "Decision of the Secretary in the Matter of Accrediting Council for Independent Colleges and Schools," December 12, 2016, available at <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>

<sup>24</sup> "Attorneys General Opposing the Application for Initial Recognition of the Accrediting Council for Independent Colleges and Schools," February 16, 2018," Office of the Attorney General, Massachusetts, February 16, 2018, available at [http://www.marylandattorneygeneral.gov/news%20documents/Opposing\\_ACICS\\_Recognition.pdf](http://www.marylandattorneygeneral.gov/news%20documents/Opposing_ACICS_Recognition.pdf).

<sup>25</sup> Appendix A, ACICS Application for Initial Recognition.

<sup>26</sup> Under 34 CFR 602.32(e), "If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff - (1) Returns the agency's application and provides the agency with an explanation of the deficiencies that caused staff to take that action; and (2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance."

ACICS failed to show that it has effective mechanisms for evaluating institutions, the evidence indicates that the agency's mechanisms have proven *ineffective*.

We urge the Department's Accreditation Group staff to recommend denying ACICS' application for recognition at this time, and to remove ACICS from the upcoming NACIQI agenda in May 2018, in light of the agency's failure to meet multiple eligibility criteria for initial applicants.

Sincerely,

Robert Shireman  
Senior Fellow  
The Century Foundation

Tariq Habash  
Senior Associate  
The Century Foundation

Attachment: Declaration of Robert Shireman

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

THE CENTURY FOUNDATION,

Plaintiff,

v.

BETSY DEVOS, *in her official capacity*, and  
the UNITED STATES DEPARTMENT OF  
EDUCATION,

Defendants.

No. 18-cv-1128-PAC

**DECLARATION OF ROBERT SHIREMAN**

I, Robert Shireman, pursuant to 28 U.S.C. § 1746, hereby declare:

1. I am employed as a Senior Fellow at The Century Foundation (“TCF”), where I work on higher education policy with a focus on affordability, quality assurance, and consumer protections.

2. I am over the age of 18, have personal knowledge of the facts set forth herein, and, if called and sworn as a witness, could and would testify competently hereto.

3. I previously served in the White House as a senior policy advisor to the National Economic Council and was also deputy undersecretary at the United States Department of Education.

4. As a Senior Fellow, I oversee TCF’s work on the public comments at issue in this case and other matters related to accreditation in higher education.

5. I am aware that, in response to Freedom of Information Act requests submitted by TCF and following the filing of the above captioned lawsuit, the Department has produced approximately 517 files totaling approximately 20,000 pages of material to TCF.

6. Shortly after receiving these materials, TCF began its review and analysis. TCF, at my direction, also made the materials available to the public by posting them on its website.

7. TCF has four people on its higher education team, three of whom were previously assigned to matters other than the accreditation work at issue in this case. Upon receipt of the materials, and recognizing the volume and timeframe involved, I called TCF President Mark Zuckerman to ask that resources be shifted to the review of these materials.

8. TCF has reallocated resources to devote a total of 2.75 FTE to the review and analysis of these materials. TCF employees are working overtime, including nights and weekends, to review and analyze the materials in order to enable TCF to provide informed comments.

9. Despite numerous other projects and supervisory duties, I am also reviewing these materials. I am able to devote an average of approximately four hours per day on review and analysis of these materials.

10. In an attempt to draft a comment by the March 1 deadline, TCF made educated guesses as to which exhibits were likely to be the most important. We selected approximately 40% of the files as such "priority files" and set the remaining 60% aside.

11. Despite our best efforts, TCF has not had the time to look at, let alone analyze and comment upon, the full volume of materials provided by the Department since February 16, 2018.

12. Shortly after starting our review of the produced materials, TCF learned that the Department failed to redact personally identifiable information (“PII”) from its production. Along with eight exhibits that the Department clawed back and provided redacted versions, my staff discovered non-redacted PII scattered throughout the materials. Each time my staff discovered an error, the document was removed from TCF’s website, redacted by TCF, and reposted.

13. In addition, on February 23, TCF was contacted by the general counsel of the ABA, who noted that numerous documents released by the Department contained ABA employee PII. The ABA requested that TCF immediately remove the materials from its website and redact all PII. TCF cooperated with the request and worked with the ABA for much of that afternoon to correct the errors and repost the materials.

14. Because of these errors, TCF instructed staff to remain vigilant for PII at all times. This additional step added time and complexity to our review process, as each error required staff to remove documents from its website, make the necessary redactions, and repost the materials.

15. As of February 28, 2018, TCF has not been able to conduct a meaningful review and analysis of the materials sufficient to permit TCF to provide the type of informed analysis it would otherwise want to provide.

16. TCF anticipates that it will testify before NACIQI about the ACICS Application for Initial Recognition and/or the ABA Compliance Report but, to date, the NACIQI meeting date has not been formally published in the Federal Register. I have seen, however, that a date in May 2018 has been informally announced on the Department’s website.

17. Upon reviewing the exhibits to the ACICS Application for Initial Recognition, I came across Appendix A. Appendix A is an 18-page submission from ACICS to the Department, dated December 28, 2017. Page one of Appendix A references a December 1, 2017 letter from the Department's Accreditation Group to ACICS stating that the Department staff had "determined that ACICS had not yet provided sufficiently persuasive evidence from educators, educational institutions, licensing bodies, practitioners, and employers to demonstrate compliance with this criteria." A true and correct copy of Appendix A is attached hereto as Exhibit 1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on February 28, 2018.

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Robert Shireman