

ACICS Recognition Reinstated

April 4, 2018

Secretary Betsy DeVos announced earlier today that the US Department of Education has retroactively reinstated the federal recognition of the Accrediting Council for Independent Colleges and Schools as of December 12, 2016, and the accreditor will remain in that status until she can reconsider its prior request for re-recognition. Prior posts discussing the ACICS and ED dispute can be found [here](#). The reinstatement follows the March 23, 2018, decision by Judge Reggie B. Walton of the United States District Court for the District of Columbia that concluded the former ED Secretary erred in not considering more than 36,000 pages of relevant materials before denying ACICS' petition for continued recognition in 2016. Judge Walton's opinion stated definitively:

nder the circumstances presented here—where the Department solicited the data, represented that it was “important” to the recognition process, and then refused to consider it with practically no explanation—and given the sheer volume of the data and the fact that the defendants do not dispute its relevance, the Court does not have difficulty concluding that acted arbitrarily and capriciously by failing to consider .

Accrediting Council for Indep. Colleges & Sch. v. DeVos, No. CV 16-2448 (RBW), 2018 WL 1461958, at *41 (D.D.C. Mar. 23, 2018). The court remanded the prior decision to the ED Secretary and, after reviewing the court's directive, she decided to reinstate recognition, reopen consideration of ACICS' January 2016 request for re-recognition (which will include review of the previously ignored 36,000 pages of information and allow ACICS the opportunity to submit additional information by May 30), and even previewed the potential outcomes of the review. If ACICS convinces the Secretary that it meets all regulatory criteria, its recognition will continue to 2021. If ACICS is not persuasive, the Secretary announced she may consider an alternative to denial that allows ACICS an additional 12 months to demonstrate compliance. In either case, unless unforeseen and remarkable circumstances intervene, the current deadline of June 12, 2018 for ACICS schools to secure alternate accreditation to retain Title IV eligibility no longer stands.

The announcement ends a tumultuous period for the agency that faced an uncertain future as recently as late last month after a provision expected to extend ED's recognition of the agency was removed from the omnibus federal spending bill prior to passage. In addition to the ongoing court case and potential omnibus provision, ACICS also applied to ED seeking recognition and was scheduled to be reviewed by NACIQI – the same advisory committee that previously recommended removing the department's recognition of ACICS in 2016 – at its upcoming meeting in May. The timing of that review was particularly important, as colleges and universities that relied on ACICS to demonstrate eligibility to receive Title IV financial aid were given until June 12, 2018, to secure alternative accreditation or lose access to such funds. Secretary DeVos' action explicitly removed ACICS from the NACIQI May agenda and, as a result, the decision related to the status of ACICS will remain in her office.

Schools that were required to sign Provisional Program Participation Agreements (PPPAs), including the binding addenda, as a result of ACICS's loss of recognition have started receiving letters from ED that provide guidance regarding the current status of these agreements. According to these letters, schools no longer need to comply with the addenda conditions (including those previously triggered by failure to complete a site visit with a new accrediting agency by February 12, 2018), regardless of their certification status prior to ACICS' loss of recognition. For a school that was fully certified at the time of the December 2016 withdrawal of recognition and whose Program Participation Agreement (PPA) would not have expired between December 12, 2016 and June 12, 2016, ED is stating that the school is “now in fully certified status until the original period of certification expires, so long as the institution is currently accredited by ACICS or another recognized accreditor.” It remains to be seen how ED intends to document this fully certified status, whether by issuing a new PPA or rescinding the PPPA, but the certification status nonetheless reverts to the period prior to the action.

With respect to a school whose prior participation agreement (including month-to-month) would have expired between December 12, 2016 and June 12, 2018, regardless of whether the institution was fully or provisionally certified, ED is stating that it must “submit a new application for certification within 30 days of the date of this letter, including demonstrating accreditation by ACICS or another recognized accreditor.” It is unclear whether ED expects that schools that withdrew from ACICS accreditation to focus on seeking approval from another agency must actually achieve accreditation by the May 3 filing deadline, but we expect that this and other uncertainties related to schools' certification

status will be addressed in the coming weeks, including the status of schools with PPPAs at the time of ACICS' withdrawal of recognition that would not have expired between December 12, 2016 and June 12, 2018. We expect those schools to similarly retain eligibility to receive Title IV funds, but that circumstance was not addressed in the Secretary's letter.

ACICS schools also should alert relevant state officials and other regulatory agencies to discuss the impact the Secretary's decision has on existing authorizations. Some agencies altered the terms of prior approvals as a result of the 2016 termination of recognition, and although the Secretary's decision corrects the flawed conclusion, ED's actions are not binding on other regulators and therefore will not automatically undo any adverse consequences with other oversight agencies.

Please feel free to contact Naomi Harralson May or Jay Vaughan with any questions.

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