

July 12, 2019

Secretary Betsy DeVos
Attn: Jean-Didier Gaina
U.S. Department of Education
400 Maryland Avenue, SW
Mail Stop 294-20
Washington, D.C. 20202

RE: Docket ID ED-2018-OPE-0076

Dear Secretary DeVos:

Thank you for the opportunity to submit comments in response to the U.S. Department of Education's notice of proposed rulemaking (NPRM), "Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition for State Agencies."

WSCUC joins in the comments submitted by the Council of Regional Accrediting Agencies (C-RAC, 7/11/19), and takes this opportunity to add or reinforce a few significant points.

Maximum Transparency

Transparency by both accrediting agencies and the Department of Education is a vital component of effective quality assurance, accountability, and oversight. Transparency is a particular and historic priority for WSCUC, which publishes full team reports and Commission Action Letters to allow the public open windows into the process and findings of accreditation. The value of transparency applies equally to assuring appropriate sunshine for the Department's review of its own operations and of accrediting agency actions.

Alternative standards -- 34 CFR Sec. 602.18(c)

The proposed rule establishes several essential conditions for alternative standards or extensions of time, including Commission adoption, equivalent goals and metrics, a demonstrated need for the alternative and that it meet the intent of the original standard and not harm students. One additional way to assure that these alternatives are consistent with the law and approved standards would be to require agencies to report to the Department on actions involving alternative standards or extensions of time. This could be done either at the time of re-recognition or annually, but in any event in a clear enough format that all such instances could be readily identified by the public.

Review process generally and monitoring provisions -- 34 CFR 602.33(c)

The proposed rule makes a variety of changes intended to rationalize the departmental review process for accrediting agency recognition. These changes must be applied with rigor and consistently. An on-site "spot check" of records during a visit may not be sufficient to understand an agency's full body of work during a review period. The Department must also have sufficient staff to handle the workload should these rule changes increase the number of agencies that need to

be reviewed and monitored (even if work requirements are offset to a degree by reductions in review steps that did not add value).

Transparency is necessary here. Looking specifically at monitoring, after the response from the agency to an initial monitoring report, the Department staff can either conclude the review, continue monitoring, or, if an agency's response does not satisfy staff, publish the staff analysis in the Federal Register for public comment. It is positive that issues that cannot be resolved by staff and agency are not only public but open for public comment leading to a recommendation to NACIQI and ultimately to Secretarial action. However, there are two monitoring situations that would operate under the radar with no public disclosure: when the Department decides to conclude or to continue monitoring. These situations should also be open to public view (for example, through a staff summary report on monitoring actions to NACIQI at each meeting) to assure that the Department assures compliance with standards and is consistent.

Rigorous Implementation by the Department of Education

In its introduction to the proposed rule, the Department accurately observes that
“Increased competition among accreditors could have the unintended consequence of encouraging some accreditors to lower standards. It is therefore incumbent on the Department and NACIQI to utilize new accountability and oversight tools provided for in these regulations to properly monitor agencies and mitigate these risks.” USED Executive Summary, Costs and Benefits, <https://www.regulations.gov/document?D=ED-2018-OPE-0076-0644>.

The Department's responsibility for implementation is enormous and critical. Its commitment to rigorous oversight is at the heart of whether implementation of these rules serves the interests of students and taxpayers. At best, through careful screening and oversight of accrediting agencies, narrow reading of exceptions and flexibility, and appropriate visibility of its actions and accreditors' decisions, the system can reap the benefits of selective changes in process and requirements. If, however, the Department reads or applies provisions such as “substantial compliance,” “alternative standards,” expansion of scope without adequate monitoring, or “affiliation” with an existing agency too broadly, and without appropriate transparency, a system that is already under pressure can be weakened. The proof will lie in the Department's exercise of its judgment and discretion.

We encourage the Department to move carefully to minimize risk as it employs new authorities. For example, with regard to new accrediting agencies, we note with interest the suggestion in others' comments that the Department consider establishing limits on the number of institutions or programs a new accreditor may approve at the outset while it gains experience and demonstrates its capacity and track record to the Department. This is a sensible way to be open to approval of new agencies that fully meet federal recognition standards while protecting against risk to students and taxpayers should the agency encounter difficulty or be unable to maintain standards while scaling up. We suggest that, where the Department determines that limitations are warranted, in addition to limits on number of institutions and programs it also consider limits on the total number of students enrolled in approved institutions and/or federal dollars that can be borrowed and granted through those accreditors.

Protecting Students in Teach Out Situations -- 602.26(e)

The proposal to allow the extension of student aid for up to 120 days after an institution has been found to fall below federal standards is understandably the subject of question and many comments. WSCUC views this as a reasonable and limited allowance that can assist students and avert some of the worst disruption to them and their education plans at the time of closure.

We have seen and done our best to help manage multiple closure situations in which students very much want to complete their program or term in the institution they have been attending. , When we are able to determine that the education program is satisfactory or better for that short term purpose, it is in students' interest to allow teach-out within the same institution as one of the options available to them. The requirement that all three triad players must agree on such an extension, coupled with the Department's ability to limit its length and scope, should provide appropriate protection. This clear cut, time-limited allowance would actually contain a higher level of scrutiny than the current arrangement, in which a similar result of extended eligibility is sometimes reached after a decision to withdraw accreditation that is stayed during the pendency of an appeal.

Overall the teach-out provisions are positive. Unfortunately, while reiterating current expectations that schools in high risk situations prepare teach out plans, the rules contain no additional "or else" element to compel preparation of plans, except the single consequence, loss of accreditation, that the agency is almost certainly already considering carefully,. We encourage the Department to consider whether there are any tools to compel or support timely teach out planning, such as collaboration between the Department and accreditor on creation and allocation of escrow accounts by a troubled institution, commitment of funds related to the institution already held by the Department to this purpose, or consequences for individual institutional actors.

Finally, in the **Regulatory Impact Analysis** section the department refers to expense that it suggests accrediting agencies now incur to submit recognition applications as part of its justification for changes in the review process. While the review process changes are generally positive, WSCUC notes for the record that it secured full re-recognition with no compliance requirements based on what seemed to us a reasonable commitment of staff time, commensurate with the significance of the federal grant of authority reflected by recognition, and without the need for external assistance to prepare materials for submission to the Department.

Thank you for this opportunity to participate in the development of these important regulations. Please contact me at jstudley@wscuc.org if WSCUC can be helpful in any way.

Sincerely,



Jamiene S. Studley
President