

**U.S. Department of Education**

**Staff Report  
to the  
Senior Department Official  
on  
Recognition Compliance Issues**

**RECOMMENDATION PAGE**

1. **Agency:** Accrediting Bureau Of Health Education Schools (1969/2005)

(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)

2. **Action Item:** Petition for Continued Recognition

3. **Current Scope of Recognition:** The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, or Academic Associate degree, including those offered via distance education.

4. **Requested Scope of Recognition:** The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, Academic Associate degree, or Baccalaureate degree, including those offered via distance education.

5. **Date of Advisory Committee Meeting:** June, 2011

6. **Staff Recommendation:** Grant the agency's request for an expansion of its scope of recognition to include its accreditation of Baccalaureate degrees. Continue the agency's current recognition and require the agency to come into compliance within 12 months, and submit a compliance report that demonstrates the agency's compliance with the issues identified below.

7. **Issues or Problems:**

- The agency must demonstrate that it meets the separate and independent requirements [§602.14(a)].
- The agency must demonstrate that its public members meet the definition of a public representative as defined by the Secretary's Criteria for Recognition [§602.14(b)].
- The agency must demonstrate that its commissioners and evaluators are trained on their responsibilities regarding distance education and baccalaureate degree programs [§602.15(a)(2)].
- The agency must demonstrate that it has representatives of the public, as defined by the Secretary's Criteria for Recognition, on all decision-making bodies, and that it has an effective mechanism in place to ensure compliance [§602.15(a)(5)].
- The agency must demonstrate that its review and evaluation of institutions and programs is inclusive of students in and programs offered via distance education [§602.16(b) & (c)].
- The agency must demonstrate that it provides an institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards and its performance with respect to student achievement [§602.17(f)].
- The agency must amend and clarify its policies and procedures to reflect that the executive committee of the commission has the authority of the commission to make interim decisions concerning substantive changes; demonstrate that the executive committee meets the decision-making body composition requirements of the Secretary's Criteria for Recognition, if applicable; and demonstrate the commission makes the final decisions concerning substantive changes as required by this section. The agency must provide documentation to demonstrate implementation of this policy [§602.22(a)(1)].
- The agency must provide evidence of policy implementation [§602.22(a)(3)].
- The agency must amend its substantive change policy to clearly specify that the effective date for substantive changes will not be retroactive [§602.22(b)].
- The agency must provide evidence of a comprehensive review and approval process for teach-out plans, which includes assessment criteria established by the agency for the equitable treatment of students

[§602.24(c)(2)].

- The agency must provide evidence of a review and approval process for teach-out agreements [§602.24(c)(5)].
- The agency must demonstrate that its definition of a public member meets the definition of a public representative as defined by the Secretary's Criteria for Recognition, and that it has an effective mechanism in place to ensure compliance [§602.25(f)].

## **EXECUTIVE SUMMARY**

### **PART I: GENERAL INFORMATION ABOUT THE AGENCY**

The Accrediting Bureau of Health Education Schools (ABHES or the agency) is a national institutional and programmatic accreditor. Its current scope of recognition is the accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, or Academic Associate degree, including those offered via distance education. The agency is requesting a recognized scope that would include its accreditation of programs at the baccalaureate level.

ABHES accredits 211 institutions and 161 programs. The Secretary's recognition of the agency enables its accredited institutions to seek eligibility to participate in student financial assistance programs administered by the Department of Education under Title IV of the Higher Education Act of 1965, as amended. Consequently, the agency must meet the separate and independent requirements established in the regulations.

#### **Recognition History**

The Accrediting Bureau of Health Education Schools (ABHES or the agency) received initial recognition in 1969 for its accreditation of private and public medical laboratory technician programs. The agency's recognition has been periodically reviewed and continued recognition has been granted after each review. In 1974, the agency was granted an expansion of scope to include the accreditation of medical assistant programs in the private sector. In 1982, the agency was granted another expansion of scope for the accreditation of private, postsecondary institutions offering allied health education. In 1995, the agency was granted an expansion of scope to accredit institutions and programs leading to the Associate of Applied Science and the Associate of Occupational Science degrees. In 1998, the agency was granted an expansion of scope to accredit institutions offering predominantly allied health education programs. In 2007, the agency was granted an expansion of scope to accredit institutions and programs leading to the Academic Associate degree and programs offered via distance education.

The last full review of the agency was conducted at the December 2004 National

Advisory Committee on Institutional Quality and Integrity (NACIQI or the Committee) meeting, at which the Committee recommended and the Secretary concurred that the agency's recognition be renewed for five years and that it submit an interim report addressing the issues identified in the staff analysis. In addition, the Secretary granted the agency an expansion of scope to include the accreditation of surgical technology programs. The interim report was reviewed during the June 2006 meeting of the Committee. The Secretary accepted the interim report.

In conjunction with the current review of the agency's renewal petition and supporting documentation, Department staff conducted a file review at the agency on April 26, 2011.

## **PART II: SUMMARY OF FINDINGS**

### **§602.14 Purpose and organization**

**(a) The Secretary recognizes only the following four categories of agencies:**

**The Secretary recognizes...**

**(1) An accrediting agency**

- (i) Has a voluntary membership of institutions of higher education;**
- (ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and**
- (iii) Satisfies the "separate and independent" requirements in paragraph (b) of this section.**

**(2) An accrediting agency**

- (i) Has a voluntary membership; and**
- (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.**

**(3) An accrediting agency for purposes of determining eligibility for Title IV, HEA programs--**

- (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and**
- (ii) Either satisfies the "separate and independent" requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.**

**(4) A State agency**

- (i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and**
- (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.**

The agency is recognized under 602.14(a)(1). The agency has, as a principal purpose, the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs.

The agency's Accreditation Manual states that it is an independent non-profit agency unrelated to any trade or membership organization and that institutional and programmatic accreditation by ABHES is voluntary. However, the agency has not demonstrated that it meets the separate and independent requirements of this section.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that it meets the separate and independent requirements below (Section 602.14 (b)).

**Analyst Remarks to Response:**

The agency has not demonstrated that it meets the separate and independent requirements (Section 602.14(b)) as required by this section.

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**(b) For purposes of this section, the term separate and independent means that--**

- (1) The members of the agency's decision-making body--who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both--are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;**
  - (2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;**
  - (3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;**
  - (4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and**
  - (5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.**
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- (1) ABHES' commissioner nomination, election and selection process is outlined in the agency's bylaws and precludes commissioners from being selected from outside entities. Commissioners are elected by the agency's membership or selected by the commissioners themselves (in two separate processes) from a slate prepared by a nominating committee.**

(2) ABHES' bylaws define a public member and require two public members on the 11-member commission thus meeting the 1:7 ratio required by the criterion. The agency's Accreditation Manual also describes that at least one public member is required on the three-person appeals panel (another decision-making body). The agency's definition of a public member does not ensure that public members meet the definition of a public representative as defined by the Secretary's Criteria for Recognition as it does not include the requirement that public members are not members of any trade association or membership organization related to, affiliated with or associated with the agency. The agency provided signed attestations of current public members of the commission as documentation to demonstrate that its public members adhere to the agency's definition in Section 602.15(a)(5). However, as the attestation does not include the requirement related to membership in other organizations, it is not sufficient to conclude that the public members meet the requirements of the criterion

(3) The agency addresses conflicts of interest within its Accreditation Manual and provides examples of common conflicts of interest. The agency's documentation of commission meeting minutes reflects that the agency effectively uses recusals to guard against conflicts of interest. The agency has also developed a document titled "Disclosure and Recusal Concerning Actions Involving Potential Conflicts of Interest" that the agency requires each commissioner sign as verification of his/her understanding and commitment to the conflict of interest policy; however, the agency provided no evidence of its effective application of this mechanism for its commission and appeals panel members.

(4) Dues are paid directly to ABHES. No other association or organization is involved.

(5) The agency develops its own budget independent of any other party. The budget is presented by the agency's Executive Committee and reviewed by the full commission annually. ABHES provided minutes from a commission meeting that verifies the preparation and approval of the agency's budget.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that its public members meet the definition of a public representative as defined by the Secretary's Criteria. It must also provide evidence of its effective application of its "Disclosure and Recusal Concerning Actions Involving Potential Conflicts of Interest" document for commissioners and appeal panel members.

#### **Analyst Remarks to Response:**

In response to the draft staff analysis, the agency provided signed "Disclosure and Recusal Concerning Actions Involving Potential Conflicts of Interest" forms for both commissioners and appeals panel members as documentation to demonstrate the effective application of its efforts to address conflicts of interest on its decision-making bodies.

The agency also provided its notice to its membership and other interested parties of its revised bylaws and public member definition. Although the agency revised its definition to now include the requirement that public members are not members of any trade association or membership organization related to, affiliated with, or associated with the agency, the agency's revised definition still does not completely address the definition requirements. The agency's definition does not also exclude the spouse, parent, child, or sibling of a public member from being a member of one of those associations or organizations, as required by the Secretary's definition.

The agency provided new signed attestations for the current public members of the commission and appeals panel as documentation to demonstrate that its public members adhere to the revised definition. However, as outlined in the preceding paragraph, the attestation does not meet the requirements of the Secretary's definition; it is not sufficient to conclude that the public members meet the requirements of the criterion.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that its public members meet the definition of a public representative as defined by the Secretary's Criteria for Recognition.

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### **§602.15 Administrative and fiscal responsibilities**

**The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.**

**The agency meets this requirement if the agency demonstrates that--**

**(a) The agency has--**

**(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence education;**

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**Commissioners:** The commission is both the policy- and decision-making body of the agency. The agency's bylaws specifically define the qualifications of each seat on the commission, thus ensuring that it includes academicians, administrators, educators, practitioners, and public members. The agency provided the resumes of each commissioner to demonstrate that each commissioner met the qualifications of his/her seat. The qualifications of the agency's commission reflects the current scope of the agency's recognition. However, the agency has not described how its commission includes expertise in the requested expansion of scope to include baccalaureate degrees.

The agency demonstrated that it provides training to commissioners regarding their role and responsibilities, as well as the standards, policies, and procedures of the agency. This training is accomplished through review of an orientation manual, in-person training sessions, attendance at accreditation workshops, and observation of on-site evaluations. However, the agency has not demonstrated that its commissioners are specifically trained on their responsibilities regarding programs offered via distance education and the expansion of scope to include baccalaureate degree programs.

**Appeals panel members:** The agency's Accreditation Manual (Exhibit E-1) includes specific information on the appeals process; however the agency did not provide any information or documentation concerning the qualifications, selection, and training of appeals panel members.

**Evaluators:** The agency has a list of minimum qualifications for evaluators, including reviewers for baccalaureate degree programs, and requests information about those qualifications on the evaluation application form, to include the specific areas of expertise within the allied health field. The qualification requirements include education and/or experience as an administrator, educator, or practitioner. The qualifications of the agency's evaluators reflect the current scope of the agency's recognition, except distance education. Although the agency provided a sample team composition to include a distance education review and evaluator, the agency has not described how it ensures distance education expertise on all reviews of institutions or programs offering distance education.

The agency demonstrated that it provides comprehensive training to evaluators regarding their role and responsibilities, as well as the standards, policies, and procedures of the agency. This training is accomplished through review of a training manual, mentoring, and attendance at evaluator training workshops. Training manual review is confirmed via an assessment tool, the results of which are reviewed by staff to ensure competency. However, the agency has not demonstrated that its evaluators are specifically trained on their responsibilities regarding programs offered via distance education and the expansion of scope to include baccalaureate degree programs.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that its commissioners and evaluators are qualified and trained on their responsibilities regarding distance education and baccalaureate degree programs. It also must demonstrate that appeals panel members are qualified and trained, as required by this section.

**Analyst Remarks to Response:**

In response to the draft staff analysis, the agency demonstrated via resumes and training materials that its appeals panel members are qualified and trained on their responsibilities, and addressed the potential need for qualified and trained appeals panel members regarding baccalaureate degree programs.

The agency has also demonstrated that its commission and evaluator pool includes a cohort of individuals with varying levels of knowledge and experience in distance education and baccalaureate degree programs. As evidence of distance education expertise on its on-site evaluation teams, as applicable, the agency has provided a listing of evaluators with distance education in their education and/or experience sufficient to ensure that all site teams requiring an evaluation of distance education will include such a member on the team. In Section 602.12(b), the agency described the deliberate assignment of distance education and baccalaureate degree programs to commissioners and evaluators with that experience.

However, the criterion specifically requires that the agency demonstrate that its evaluators and members of the decision-making body are trained by the agency on their responsibilities regarding agency standards, policy, and procedures and in this case, training on the agency's expectations for complying with its standards and requirements regarding distance education and baccalaureate degree programs.

The agency acknowledges this requirement and has provided distance education and baccalaureate degree training materials for evaluators, but the materials were limited to a distance education training agenda and training slides that did not specifically include distance education or baccalaureate degree programs. For the training of commissioners, the agency has scheduled but has not yet conducted training sessions on distance education and baccalaureate degree programs.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that its commissioners and evaluators are trained on their responsibilities regarding distance education and baccalaureate degree programs.

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#### **(5) Representatives of the public on all decision-making bodies; and**

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The agency's bylaws and Accreditation Manual both state that the commission and appeals panel include public representation. Although the agency provided signed attestations by the current public members of the commission that they meet the agency's definition of a public member, the agency's definition does not ensure that public members meet the definition of a public representative as defined by the Secretary's Criteria for Recognition.

Staff determination: The agency does not meet the requirements of this section.

It must demonstrate that its definition of a public member meets the definition of a public representative as defined by the Secretary's Criteria for Recognition and that it has an effective mechanism in place to ensure compliance for those members of the commission and appeals panel.

**Analyst Remarks to Response:**

In response to the draft staff analysis, the agency provided its notice to its membership and other interested parties of its revised bylaws and public member definition. Although the definition now includes the requirement that public members are not members of any trade association or membership organization related to, affiliated with, or associated with the agency, it does not also exclude membership by a spouse, parent, child, or sibling in one of those associations or organization, as required by the Secretary's definition.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that it has representatives of the public, as defined by the Secretary's Criteria for Recognition, on all decision-making bodies, and that it has an effective mechanism in place to ensure compliance.

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**§602.16 Accreditation and preaccreditation standards**

**(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that 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. The agency meets this requirement if -**

- (1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:**
  - (b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.**
  - (c) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency's standards must effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (a)(1) of this section. The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education;**
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Distance education is included within the scope of recognition for the agency, and the agency applies all standards equally to programs offered residentially and via distance education. In addition, the agency has specific standards and requirements for programs offered via distance education, as included in Appendix H of the agency's Accreditation Manual. The standards are sufficiently specific in identifying the agency's expectations.

In regards to student support services, the agency's standards require an institution or program to provide student services specific to distance education activities to assist students in completing requirements, and to assess the educational effectiveness of its distance education programs within the Program Effectiveness Plan, to include a comparison between online and on-campus, if applicable. However, the example provided in Section 602.16(a)(1)(vi) did not include information concerning student services specific to distance education or that assessment. The agency has not demonstrated that its student support services standards are applied to programs offered via distance education.

After an initial review for capacity, the agency assesses distance education programs in conjunction with its accreditation review of institutions and programs. Even though the examples provided (in Sections 602.16(a)(1)(i) and 602.17(c)) verify the agency's review and evaluation of programs via distance education in relation to the standards, the agency uses a checklist which is not a tool that is sufficient to provide a detailed assessment of compliance, particularly in the review of programs offered via distance education.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that it effectively reviews and evaluates programs offered via distance education.

#### **Analyst Remarks to Response:**

In its response to the draft staff analysis, the agency provided additional information and documentation regarding its review and evaluation of programs offered via distance education - both its initial review of a substantive change application for distance education and for renewal of accreditation of an institution offering programs via distance education.

The Department staff continues to have concerns regarding the agency's inclusion of distance education during the renewal of accreditation process. Compliance with this criterion requires that the agency demonstrate that its standards effectively address the quality of an institution in each of its standards across programs offered on-site as well as via distance education.

The agency revised Appendix H of its Accreditation Manual, the Distance Education Verification Visit Report, as well as the administrative and program site visit report templates to require that each evaluator provide more detail regarding the assessment of an institution's or program's compliance with agency standards. However, as the agency provided only templates, it is not clear that these revised documents will be sufficient to demonstrate the on-site

evaluator's assessment of each of its standards area and how it is inclusive of students and programs offered via distance education.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that its review and evaluation of institutions and programs is inclusive of students in and programs offered via distance education.

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**§602.17 Application of standards in reaching an accrediting decision.**

**The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it--**

**(f) Provides the institution or program with a detailed written report that assesses--**

- (1) The institution's or program's compliance with the agency's standards, including areas needing improvement; and**
- (2) The institution's or program's performance with respect to student achievement;**

**and**

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The agency utilizes both the on-site evaluation team report and the final decision letter to clearly communicate areas of non-compliance, as documented in the examples included in Section 602.17(a). What is not clear is that the agency provides a detailed assessment of areas of compliance. Specifically, the agency uses a checklist which is not a tool that is sufficient to provide a detailed assessment of compliance, particularly in the review of programs at the baccalaureate degree level or offered via distance education, nor in the areas of institutional effectiveness or student achievement.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that it provides an institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards and performance with respect to student achievement.

**Analyst Remarks to Response:**

In response to the draft staff analysis, the agency revised the on-site evaluation team reports to require written documentation of the information used to clearly and comprehensively assess the extent of an institution's or program's compliance with agency standards. However, the agency has not yet implemented the new reports and therefore cannot provide documentation of a detailed assessment of an institution's or program's compliance with standards, including performance with respect to student achievement.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that it provides an institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards and its performance with respect to student achievement.

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### **§602.22 Substantive change.**

**(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if--**

**(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and**

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The agency's written policies require an institution or program to obtain the agency's prior approval of a substantive change and that approval will not be granted to any substantive change that adversely affects the capacity of the institution or program to continue to meet the agency's standards, as required by this section.

The agency's procedures are comprehensive and detailed as to the agency's expectation for submitting substantive change applications. However, they are not clear in identifying that it is the recognized decision-making body that is granting approval of the substantive change.

Also, the documentation does not clearly reflect that it is the recognized decision-making body that is granting approval of the substantive change. Although the agency provided several examples of completed substantive changes, those examples did not include documentation of the approval of the substantive change by the commission, but rather suggests that agency staff is granting approval. Because substantive changes are, in effect, accreditation decisions, the Department requires that all approvals of substantive changes listed in the criterion must be approved by the recognized decision-making body, not agency staff.

Staff determination: The agency does not meet the requirements of this section. It must amend and clarify its substantive change policies and procedures to reflect that decisions made by the recognized decision-making body are required before the change is included in the institution's or program's grant of accreditation, and demonstrate effective application of its review and approval procedures.

### **Analyst Remarks to Response:**

In response to the draft staff analysis, the agency clarified its substantive change policies to reflect its practice that the executive committee of the agency grants the approval of all substantive changes that occur within a grant of accreditation. Department staff conducted a file review at the agency's offices in April 2011 and observed documentation of this practice.

Although the agency's bylaws (Section 6.2.1) state that the executive committee has the authority of the commission by majority vote during the intervals between commission meetings, that authority is limited and specifically excludes accrediting decisions. Since substantive changes are, in effect, accreditation decisions, it is not clear that the commission has provided its executive committee with the authority to act on its behalf in decisions of interim/provisional approval of substantive changes; that the commission provides final approval of all substantive changes; or that the agency ensures that the executive committee meets the decision-making body composition requirements of the Secretary's Criteria for Recognition (Section 602.15(a)(5)). The agency also did not provide any documentation to demonstrate implementation of this policy.

Staff determination: The agency does not meet the requirements of this section. It must amend and clarify its policies and procedures to reflect that the executive committee of the commission has the authority of the commission to make interim decisions concerning substantive changes; demonstrate that the executive committee meets the decision-making body composition requirements of the Secretary's Criteria for Recognition, if applicable; and demonstrate the commission makes the final decisions concerning substantive changes as required by this section. The agency must provide documentation to demonstrate implementation of this policy.

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**(3) The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.**

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The agency has a written policy concerning any substantive change(s) that would require a comprehensive evaluation of an institution or program. Specifically, the agency states, "ABHES will evaluate each substantive change, both singly and in the context of other substantive changes already approved or proposed since the institution's or program's grant of accreditation to determine whether substantive changes are sufficiently extensive to require a new comprehensive evaluation of the institution or program. In making this determination, ABHES requires a new comprehensive evaluation when believes that any change or changes, taken separately or in the context of other changes raises a reasonable question whether the institution or program will maintain

compliance with all accreditation criteria.”

However, it is not clear that the agency, in these circumstances, is intending to conduct a full review for a new grant of accreditation (including a self study, site visit, and new decision regarding accreditation) as is required by the interpretation of this criterion. The agency states that certain substantive changes would require a site visit within six months, but those site visits (and any materials submitted and reviewed) appear to be limited to the substantive change and are not comprehensive in nature in the sense that this criterion requires.

The agency has not clearly identified what conditions or circumstances would suggest that the institution may have morphed into a new institution and would require a new review and grant of accreditation.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that it has defined when the changes made or proposed by an institution or program are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution or program, and provide evidence of policy implementation.

#### **Analyst Remarks to Response:**

In response to the draft staff analysis, the agency revised its substantive change policies clearly define when changes made or proposed by an institution or program are or would be sufficiently extensive to require a new comprehensive evaluation. Specifically, the policy states that the commission will review any institution or program that undergoes three substantive changes within a 12-month period, and determine whether a comprehensive evaluation, to include new review and grant of accreditation, is warranted. Although the agency provided its tracking procedure for this new policy, it did not provide documentation to demonstrate enforcement of this policy.

**Staff determination:** The agency does not meet the requirements of this section. It must provide evidence of policy implementation.

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(b) **The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but need not, require a visit by the agency.**

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The agency has clear policies and procedures (Section 602.22(a)) that prohibit it from making retroactive approvals of substantive changes, except regarding changes in ownership or control. The example provided, for a substantive change other than change in ownership, demonstrates that the agency effectively adheres to its policies and procedures. What is not clear is that the agency uses the date of the approval letter as the effective date on which a substantive change is included in an existing grant of accreditation , as the approval letter does not include an explicit effective date.

In regards to a change in ownership, the agency provided an example where the agency utilized the transaction date as the effective date, but that date was beyond 30 days prior to the accreditation decision approval.

**Staff determination:** The agency does not meet the requirements of this section. It must demonstrate that it only designates the date of a change in ownership as the effective date of its approval if the accreditation decision is made within 30 days of the change in ownership. The agency must also demonstrate that it clearly specifies an effective date for substantive change approvals.

**Analyst Remarks to Response:**

In response to the draft staff analysis, the agency provided the amended policy for a change in ownership that specifically states that the approval date will be the date of the change in ownership if the approval is made by the commission within 30 days of that date, and documentation to demonstrate implementation of the policy. Department staff conducted a file review at the agency's offices in April 2011 and confirmed implementation of this policy.

In the draft staff analysis, the issue regarding the substantive change approvals was that the effective date was not specified. In response, the agency provided its revised substantive change policy which states that the effective date of an approval is the date of the letter, unless otherwise noted. However, as the agency revised its policy, it is now not clear that the effective date cannot be retroactive.

**Staff determination:** The agency does not meet the requirements of this section. It must amend its substantive change policy to clearly specify that the effective date for substantive changes will not be retroactive.

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**§602.24 Additional procedures certain institutional accreditors must have.**

**If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:**

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- (2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.**
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The agency's teach-out plan policies require that ABHES review the plan to ensure the equitable treatment of students as required by this section. Although the agency provided an example to include a teach-out plan, the documentation does not include evidence that the agency reviewed the plan to ensure it provides for the equitable treatment of students, specifies additional charges, if any, and provides for notification to the students of any additional charges.

Staff determination: The agency does not meet the requirements of this section. It must provide documentation to demonstrate that the agency reviews a teach-out plan to ensure it provides for the equitable treatment of students, specifies additional charges, if any, and provides for notification to the students of any additional charges.

**Analyst Remarks to Response:**

In its response to the draft staff analysis, the agency stated that it has one staff member responsible for the evaluation of teach-out plans. And although the agency provided documentation of its review process, the form used to assess teach-out plans and the notification letter sent to an institution do not include any criteria established by the agency to assess the equitable treatment of students, but instead only include the regulatory language of this section of the Secretary's Criteria for Recognition. The current process does not demonstrate that the agency has developed a comprehensive tool to adequately assess teach-out plans.

Staff determination: The agency does not meet the requirements of this section. It must provide evidence of a comprehensive review and approval process for teach-out plans, which includes assessment criteria established by the agency for the equitable treatment of students.

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- (5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, with another institution to submit that teach-out agreement to the agency for approval. The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that--**

- (i) The teach-out institution has the necessary experience, resources, and support services to--**

**(A) Provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; and**

**(B) Remain stable, carry out its mission, and meet all obligations to existing students; and**

**(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances and that it will provide students with information about additional charges, if any.**

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The agency's teach-out plan policies state that ABHES will review and approve a teach-out agreement that meets the requirements of this section. However, the teach-out plan policies do not require a teach-out agreement be submitted to the agency for approval.

Although the agency provided a teach-out plan example, the documentation does not include a teach-out agreement or evidence of agency review to demonstrate implementation of its review and approval policies regarding teach-out agreements.

**Staff determination:** The agency does not meet the requirements of this section. It must amend its teach-out plan policies to require a teach-out agreement be submitted for review and approval by the agency. In addition, the agency must provide documentation to demonstrate that the agency reviews and approves teach-out agreements in accordance with its policies, or indicate that it has not had occasion to apply it.

**Analyst Remarks to Response:**

In response to the draft staff analysis, the agency amended its teach-out plan policies to clearly require the submission of any teach-out agreement executed by an institution for approval by the agency.

The agency stated that it has not reviewed a teach-out agreement, and therefore has not had occasion to apply the policy. However, the agency did not provide any documentation of a review and approval process for teach-out agreements, such as what review indicators it will apply to ascertain the viability of the teach-out agreement to provide students with an alternative educational offering.

**Staff Determination:** The agency does not meet the requirements of this section. It must provide evidence of a review and approval process for teach-out agreements.

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## **§602.25 Due process**

- (f) Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final.
- (1) The appeal must take place at a hearing before an appeals panel that--
- (i) May not include current members of the agency's decision-making body that took the initial adverse action;
- (ii) Is subject to a conflict of interest policy;
- (iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, or reverse adverse actions of the original decision-making body; and
- (iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. In a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must identify specific issues that the original decision-making body must address. In a decision that is implemented by or remanded to the original decision-making body, that body must act in a manner consistent with the appeals panel's decisions or instructions.
- (2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation that the agency permits the institution or program to make on its own during the appeal.
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The agency's policies regarding appeals contain all the elements required by this section, to include the composition, function, and authorized actions of the appeals body. The appeals process also allows for the institution or program to be represented by legal counsel.

The example provided verifies that the agency provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final. However, as the example provided was an ongoing appeal and the final outcome was not provided, the agency has not demonstrated that the appeals panel has and uses its authority to affirm, amend, reverse, or remand the adverse action.

In addition, as previously noted, the agency's definition of a public member does not ensure that public members meet the definition of a public representative as defined by the Secretary's Criteria for Recognition.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that the appeals panel has and uses its authority to affirm, amend, reverse, or remand the adverse action. The agency must also demonstrate that its definition of a public member meets the definition of a public representative as defined by the Secretary's Criteria for Recognition and that it has an effective mechanism in place to ensure compliance.

**Analyst Remarks to Response:**

In response to the draft staff analysis, the agency provided documentation of the outcome of the appeal example previously submitted, which demonstrates that the appeals panel has and uses its authority to affirm, amend, reverse, or remand an adverse action, and that the commission acted in a manner consistent with the appeals panel's decision in implementing the decision.

The agency also provided documentation of its revised bylaws and public member definition (Sections 602.14(b) and 602.15(a)(5)), and evidence of a mechanism for ensuring that public members of the appeals panel comply with the definition. However, as the attestation does not meet the requirements of the Secretary's definition as noted above, it is not sufficient to conclude that the public member of the appeals panel meets the requirements of the criterion.

Staff determination: The agency does not meet the requirements of this section. It must demonstrate that its definition of a public member meets the definition of a public representative as defined by the Secretary's Criteria for Recognition, and that it has an effective mechanism in place to ensure compliance.

### **PART III: THIRD PARTY COMMENTS**

The Department did not receive any written third-party comments regarding this agency.