

U.S. Department of Education

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

RECOMMENDATION PAGE

1. **Agency:** Academy of Nutrition and Dietetics, Accreditation Council for Education in Nutrition and Dietetics (1974/2007)

(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 and pre-accreditation, within the United States, of Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate level, postbaccalaureate Dietetic Internships, and Dietetic Technician Programs at the associate degree level and for its accreditation of such programs offered via distance education.

4. **Requested Scope of Recognition:** Same as above.

5. **Date of Advisory Committee Meeting:** December, 2012

6. **Staff Recommendation:** Continue the agency's 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:** It does not appear that the agency meets the following sections of the Secretary's Criteria for Recognition. These issues are summarized below and discussed in detail under the Summary of Findings section.

-- The agency must provide evidence of final documentation of the amendments to its by-laws. [§602.14(d)(e)]

-- The agency must provide final documentation of its revised policy

requiring academic representation on its Board, site evaluation teams, and appeal panel. [§602.15(a)(3)]

-- The agency must provide final documentation of compliant policies related to representation of educators and practitioners on its Board and appeal panel. [§602.15(a)(4)]

-- The agency must provide evidence of its application of its vetting procedures for public representatives. [§602.15(a)(5)]

-- The agency must provide final documentation of its revision to its student support services standard and/or policies and procedures. [§602.16(a)(1)(vi)]

-- The agency must provide evidence of its application of its revised record of student complaints standard as indicated in its response. [§602.16(a)(1)(ix)]

-- The agency must provide evidence of its final change in policy to cohere with the Secretary's definition for distance education. [§602.16(b)(c)]

-- The agency must provide final documentation of its revised policies for student verification. [§602.17(g)]

-- The agency must provide evidence of its revised monitoring procedures to include analysis of fiscal information. [§602.19(b)]

-- The agency must provide its final policy for monitoring enrollment growth. [§602.19(c)]

-- The agency must provide evidence of its revised policy on good cause extensions, or provide further information regarding its current grants of good cause extensions to ensure that they occur on an infrequent basis. [§602.20(b)]

-- The agency must provide final documentation of its revised substantive change policy as well as evidence that it has applied its policy, as appropriate.. [§602.22(a)(2)(i-vii)]

-- The agency must provide final documentation of its revised policy on when a comprehensive evaluation is required due to a sufficiently extensive substantive change. [§602.22(a)(3)]

-- The agency must provide final documentation of its revised policy for substantive changes. [§602.22(b)]

- The agency must provide evidence of its application of its policy for making public information about the pool from which an appeal panel is drawn. [§602.23(a)]

- The agency must provide final documentation of its revised policy to exclude language on holding a complaint in abeyance if a lawsuit has been filed. [§602.23(c)]

- The agency must provide final documentation of its revised policy for teach out plans and evidence of its implementation, as appropriate. [§602.24(c)(1)]

- The agency must provide final documentation of its revised policy for teach out plans. [§602.24(c)(2)]

- The agency must provide final documentation of its revised policy for teach out plans and evidence of its implementation, as appropriate.. [§602.24(c)(3)]

- The agency must provide final documentation of its revised policy for teach out plans and evidence of its implementation, as appropriate. [§602.24(c)(4)]

- The agency must provide final documentation of its revised policy for teach out plans and evidence of its implementation, as appropriate. [§602.24(d)]

- The agency must provide final documentation of its revised policy on the treatment of new financial information related to the appeals process, and evidence of its implementation, as appropriate. [§602.25(h)]

- The agency must provide final documentation of its revised policy for providing a brief summary within 60 days, and evidence of its implementation, as appropriate. [§602.26(d)]

EXECUTIVE SUMMARY

PART I: GENERAL INFORMATION ABOUT THE AGENCY

The Academy of Nutrition and Dietetics, Accreditation Council for Education in Nutrition and Dietetics (ACEND), accredits Didactic and Coordinated Programs in Dietetics at both the undergraduate and graduate levels, Dietetic Internships at the post-baccalaureate level, and Dietetic Technician Programs at the associate degree level; accreditation of these programs extends to distance education. As of the date of its application, ACEND accredited 53 Coordinated Programs, 226 Didactic Programs, 244 post-baccalaureate Dietetic Internships, and 47 Dietetic Technician Programs.

ACEND is a specialized accreditor; it is the sole accreditor of certain post-baccalaureate Dietetic Internships sponsored by academic medical centers and health care facilities. These internships are eligible to participate in Title IV, Higher Education Act (HEA) Programs. However, most programs accredited by ACEND are located within an institution that is accredited by another nationally recognized accrediting agency.

The agency currently receives a waiver of the Secretary's "separate and independent" requirements and is requesting a continuation of that waiver.

In preparing the current review of the agency for continued recognition, the Department staff reviewed the agency's petition, supporting documentation, and observed an ACEND decision meeting on June 13-15, 2012.

Recognition History

The American Dietetic Association was first listed in 1974 as the accrediting agency for Dietetic Internships and Coordinated Undergraduate Programs in Dietetics. In 1995, the ADA established the Commission on Accreditation/Approval for Dietetics Education (CAADE) as its accrediting unit. In 1999, the CAADE consolidated its accreditation and approval processes and became the Commission on Accreditation for Dietetics Education (CADE), and in January 2012 the Academy and the Commission changed their names to the current, "Academy of Nutrition and Dietetics," and the "Accreditation Council for Education in Nutrition and Dietetics" (ACEND).

ACEND was last reviewed for recognition in Spring 2007. At that time, the Secretary granted the agency continued recognition for five years.

PART II: SUMMARY OF FINDINGS

§602.14 Purpose and organization

(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the "separate and independent" requirements in paragraph (b) of this section if the agency demonstrates that--

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the "separate and independent" requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(NOTE: An agency must respond to this section only if it is requesting a waiver of the "separate and independent" requirement.)

As required under subsection (1), the Secretary has continuously recognized the agency since 1974, and the agency has continuously been granted a waiver of separate and independent requirements since 1996.

Though the common practice exercised by the agency and parent organization has been to ensure that the Academy has no role in making or ratifying accrediting or policy decisions of the agency, the Academy's by-laws explicitly state that the agency's by-laws must be approved by the Academy's House of Delegates, thereby requiring ratification by the Academy of the agency's governing policies in violation of the requirements under subsection (2) above.

Furthermore, the agency's narrative states that the budget is prepared in consultation with the Academy's accounting service. The attached budget and finances document suggests that the agency may lack the sufficient budgetary and administrative autonomy to carry out its accrediting functions independently. The agency operates under a memorandum of understanding with the parent organization that the Academy will subsidize the agency's costs, up to \$40,000

without further approval from the Academy's Board, and as indicated in the agency's narrative, the Academy has subsidized the agency's operations in the past. Though the agency has made increases to its fees which have resulted in operating profits, it is not clear from the documents provided, whether the agency exercises control over its reserve, or whether such control rests with the parent organization. The agency's proposed MOU for FY 2013 reflects that all profits generated by the agency will be retained by the agency; however, it is not clear whether the authority to allocate such reserves rests with the agency, or the parent organization (Exhibit 21, Correspondence). The agency must provide a copy of the signed FY 2013 MOU. Finally, any authority provided to the agency by its by-laws with regard to finances is, in effect, overruled by the Academy's authority to approve such by-laws.

The agency states in its narrative that the only known exception to meeting subsection (4) above was when the agency's budget was published in the Academy's annual report without the approval of the agency's Board. As provided for under subsection (4), the agency may only provide information to its parent organization that is also made available to the public. That the agency's Board was not aware of the provision of such information to the Academy raises further concerns under subsection (3) above.

Analyst Remarks to Response:

As requested in the draft analysis, the agency has provided a signed FY2013 memorandum of understanding which is in accord with the requirements of this section. The agency has also described the cordial relationship between the Association and the agency and the good faith efforts that are being made to ensure that the agency is in compliance with the waiver requirements. The agency has provided draft language to amend its by-laws that were found to be non-compliant in the draft analysis. The proposed language is in accord with the requirements of this section. The agency must provide evidence of final acceptance of the language which it is scheduled to ratify in November with an effective date of December 3, 2012.

§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--

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

The agency has as its primary purpose the accreditation of programs within institutions that are accredited by a nationally recognized accrediting agency. However, the agency also accredits post-baccalaureate dietetic internships for Title IV purposes, which are located in hospitals and similar types of institutions that are in accord with the definition of an "Institution of higher education," found under section 600.4. Therefore, the agency accredits "institutions" as defined under section 600.4 and is required to have academic/administrator representatives on its decision-making body. The agency's policies designate an administrator representative on its Board; as demonstrated by the list of Board members provided by the agency, the agency adheres to its policy.

The agency also has administrators on its Board as specifically designated by its "program representative" category who are involved in education or practice. However, the way the agency's policy is written, it is not clear whether the agency ensures representation by an academic on its Board, because the policy states that the program representative may be involved in education OR practice.

In addition, the agency needs to include both an academic and an administrator on its site evaluation teams when reviewing post-baccalaureate dietetic internship programs, and on an appeals panel considering an appeal brought by one of these programs. The agency has not addressed how it ensures such representation on these bodies.

Analyst Remarks to Response:

In its response, the agency has acknowledged the discrepancy between its by-laws and policies and procedures manual with regard to academic representation on its board, and its plans to codify compliant policies. The agency has also stated in its response that it is compliant in practice with the requirements and will also codify its practice into policy with regard to its site visitors and appeal panel. The agency must provide final documentation of its revised policy requiring academic representation on its Board, site evaluation teams, and appeal panel.

(4) Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

The agency has policies that ensure balanced representation of educators and practitioners on program review teams; the agency's policies for selection of site evaluation team members include representation by at least one educator and one practitioner.

The ACEND Board is selected from a pool of the agency's program reviewers. However, the way the agency's policy is written suggests that the Board could be constituted by either educators or practitioners. The policy does not clearly

stipulate that the Board must include representation from each of these categories. The agency has provided a list of its Board members which does demonstrate representation by educators and practitioners. The agency has also not addressed how it ensures representation of educators and practitioners on its appeal panel. Though the agency has addressed the constitution of its Standards Review Committee, such committee is not a decision-making body and is therefore not subject to the requirements of this section.

Analyst Remarks to Response:

The agency has acknowledged the discrepant policies in its manual and by-laws and has stated its good faith effort to codify its compliant practice with regard to representation of educators and practitioners on its Board and appeal panel.

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

The agency demonstrates that it has a definition for a public member that is in accord with the Secretary's definition. As evidenced by its list of Board members, the agency currently has two public members participating on their Board. However, it is not clear from the information provided that the public members meet all of the requirements of the Secretary's definition, including paragraph (3).

The agency is currently revising its appeal panel policy to ensure representation of a public member on each appeals panel.

Analyst Remarks to Response:

The agency has described its good faith effort to revise its vetting process for public representatives to ensure that they comply with the Secretary's definition by stating its intention to provide signed attestations.

§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:**

(a)(1)(vi) Student support services.

The agency's standard 23 requires programs to demonstrate that students have "access to student support services, including health services, counseling and testing and financial aid resources." As stated in the narrative, the agency's standard does not specify the level of service that must be provided. It is not clear what action, if any, the agency would or could take if it found through student interviews or other means that one or more of the student services were grossly inferior.

As evidenced by the sample self-study and site visit report provided, the agency evaluates programs under this standard. However, as it is written, Department staff has concerns regarding the rigor of the agency's student support services absent language that assesses the adequacy of such services.

Analyst Remarks to Response:

The agency has responded that it plans to reassess its current standard for student support services as it currently only assesses a program's disclosure on the availability of student support services, and does not assess the adequacy of those services. The agency must provide final documentation of its revision to its student support services standard and/or policies and procedures.

(a)(1)(ix) Record of student complaints received by, or available to, the agency.

The agency has recently made changes to ensure that site reviewers review a program's record of student complaints as part of the program's review for accreditation. Though the agency previously had a policy requiring such a review, it is not evident that reviewers consistently incorporated a review of a record of student complaints.

Analyst Remarks to Response:

The agency has responded that the review of complaint files became a requirement in June 2012, and that the agency only recently incorporated guidance through its training program to site reviewers and program directors. The agency has provided evidence from its training that reviewers must review the student complaint file and complaint resolution documents. To further ensure consistency in applying this standard, the agency has also stated that it will update its site visit report templates to include guidance to its site visitors.

(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;

The agency has provided slides from its training of site evaluators and its Board members (according to the narrative in 602.18(a)) on applying its standards for programs that offer distance education, as well as their distance education guidelines, and a sample site visit report of a program that offers distance education, and the decision letter (all included in Exhibit 20). The guidelines discuss issues related to specific agency standards as they apply to distance education reviews. The agency does not use separate standards, but provides guidance on how to apply each of its standards to programs that offer distance education. The site visit report clearly documents that the reviewers evaluated the program's provision of distance education against each of the standards.

The agency's definition of distance education, included in its substantive change policy, does not correspond to the Secretary's definition. In particular, it does not include that there must be regular and substantive interaction between the faculty and students and it could, as written, encompass correspondence education.

It is not clear from the agency's narrative, whether the agency is also seeking to expand its scope to include correspondence education.

The agency must demonstrate that it has and adheres to a definition of distance education that conforms with the Secretary's definition.

Analyst Remarks to Response:

The agency has responded that it will revise its policies to cohere with the Secretary's definition for distance education and that it does not intend to expand its scope to include correspondence education. The agency must provide evidence of its final change in policy. (Note that the definition of correspondence education in the regulations provides for electronic delivery of correspondence courses, as well as paper-based materials delivered through the mail).

§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--

(g) Requires institutions that offer distance education or correspondence education to have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it--

(1) Requires institutions to verify the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as--

(i) A secure login and pass code;

(ii) Proctored examinations; and

(iii) New or other technologies and practices that are effective in verifying student identity; and

(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

The agency has recently adopted a policy for reviewing a distance education offering institution's student verification policy. The agency has stated in its narrative that it does not currently have any institutions that offer distance education, and therefore, would not be able to demonstrate compliance with its policy. However, the agency must provide evidence of the final draft of its policy for review by Department staff.

Analyst Remarks to Response:

The agency has stated that it will provide final documentation of its revised policies for student verification.

§602.19 Monitoring and reevaluation of accredited institutions and programs.

(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of §602.16(f). This provision does not require institutions or programs to provide annual

reports on each specific accreditation criterion.

The agency's approach to monitoring includes collection and analysis of annual reports of program and graduate outcomes and administrative structure; a midpoint Program Assessment Report (PAR) that specifies ongoing program evaluation efforts and outcomes assessment, goal achievement; and plans for the next 5 years; and review of interim reports as necessary. However, it is not clear whether the annual report or the PAR includes fiscal information as required by this criterion.

The agency procedures prescribe the process by which the PAR is reviewed by a three-person review team and the Board. The agency procedures require a focused site visit if a program is unable to document its compliance with the agency's requirements in the PAR and/or interim reports. The agency relies on its 80% pass rate, for example, as a trigger for further monitoring of programs via the annual report and PAR.

It appears that the annual report is used to compile information regarding program and graduate outcomes for publication in the Board's annual report. The agency has also provided evidence of its decision-making based on the PAR to include statistics of Board acceptance/rejection of the PAR.

Analyst Remarks to Response:

The agency states that its current monitoring process includes programs to self-report changes in financial status on the PAR for ACEND reviewers to assess. However, the agency states in its response that it is strengthening its monitoring process by requiring programs to provide budgetary information along with the PAR for the agency to assess. The agency will provide final documentation of its procedures in its forthcoming report.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect headcount enrollment data from those institutions or programs.

It is not evident from the information provided whether the agency monitors overall growth of the institutions and programs it accredits. The agency has provided evidence that it, at least annually, collects headcount enrollment data from its institutions and programs. However, the agency must develop procedures for monitoring overall growth of its institutions and programs and provide evidence of its application of monitoring procedures.

Analyst Remarks to Response:

The agency currently has a process in place for monitoring enrollment growth of its DI programs. However, the agency is making changes to its policies to ensure that it also monitors enrollment growth of programs housed in regionally-accredited institutions. The agency states that it will provide its revised procedures for monitoring enrollment growth in its forthcoming report.

§602.20 Enforcement of standards

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

The agency has policies that reflect the requirements of this section; as evidenced by the decision letter provided that withdrew accreditation from a program, the agency follows its written policy for enforcement action. The agency also has procedures for granting good cause extensions when a program has demonstrated progress, but needs a limited period of time to fully document compliance, as outlined in its decision diagram. It is not clear from the agency's submission, however, how frequently the agency employs such extensions. Department staff requests more information regarding the use of good cause extensions by the agency to ensure that the agency grants them only on an infrequent basis in accord with the requirements of this section.

Analyst Remarks to Response:

The agency has stated that it plans to revise its policy on good cause to clarify when a good cause extension would be warranted.

§602.22 Substantive change.

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of programs of study at a degree or credential level different from that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

The agency's substantive change policy covers all of the types of substantive changes described under this section except for subsection (vii). The agency must provide the final approved policy as well as evidence that it has applied its policy, as appropriate.

Analyst Remarks to Response:

The agency has stated that it will provide its revised policy to include subsection (vii) in its forthcoming report.

(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.

The agency has prescribed curricula and program length requirements for the DI programs to which this section applies. The agency also has specified requirements for which DI programs must submit a substantive change request. Because the agency's requirements for DI programs are prescribed in such a way, and due to the programmatic status of the DI programs, the agency has sufficient control over the types and extent of changes a DI program may make without it being deemed non-compliant with the agency's requirements. However, the agency must still have a policy defining when an institution must undergo a new comprehensive review in accord with the requirements of this section. It is not clear from the agency's narrative whether the agency currently has and applies such a policy to its institutions.

Analyst Remarks to Response:

The agency has stated in its response that it will review its current practice and revise its policy and practice in accord with the requirements of this section. The agency has a thorough review process for substantive changes which typically warrant a focused evaluation. The agency states that it will develop policies for the conduct of a comprehensive evaluation as needed for extensive substantive changes.

(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.

The agency must ensure that it has and adheres to policies that specify an effective date, that is not retroactive, on which the change is included in the program's/institution's accreditation. The agency must also provide evidence of its application of such policy.

Analyst Remarks to Response:

The agency is compliant in practice under this section as it does not grant prior approvals of substantive changes and effective dates of substantive changes are not retroactive. The agency states that it is currently revising its policy to conform with its current practice and the requirements under this section.

§602.23 Operating procedures all agencies must have.

- (a) The agency must maintain and make available to the public, upon request, written materials describing--**
- (1) Each type of accreditation and preaccreditation it grants;**
 - (2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;**
 - (3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;**
 - (4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and**
 - (5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of--**

- (i) The members of the agency's policy and decision-making bodies; and**
 - (ii) The agency's principal administrative staff.**
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The agency makes all of the information required under this section available on its website, including the credentials, academic and professional titles, and affiliations of ACEND board members and staff. It is not clear that the agency provides information about members of its appeals panels (or appeal panel pool from which members are drawn), as is required for decision-making bodies. The agency makes additional information available by request.

Analyst Remarks to Response:

The agency is currently making changes to ensure that it provides information to the public regarding the pool from which an appeal panel is drawn.

(c) The accrediting agency must--

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

The agency has procedures for resolving complaints against itself and its accredited programs which includes a standard of timeliness in processing of the complaint, as well as specific timeframes for acknowledgement of the complaint and for providing an opportunity for the program to respond to the complaint. The agency provided sample complaint letters that demonstrate it applies its written complaint procedures. However, the agency's complaint policy also states that it will hold a complaint in abeyance if a lawsuit has been filed, which violates the spirit of this requirement.

Analyst Remarks to Response:

The agency states that it will revise its policy and provide it in its forthcoming report along with any evidence of its application of the policy.

§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:

(c) Teach-out plans and agreements.

(1) The agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required.

(ii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program.

(iv) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

The agency has recently amended its policy to conform with the requirements of this section. The agency must ensure that the language of the new policy includes the requirements of subsection (i) under this section. The agency has had a longstanding policy that requires a teach-out agreement under the conditions stipulated under subsection (iii) of this section, and has provided evidence of its application of an encompassing teach out plan for such a circumstance.

Analyst Remarks to Response:

The agency states in its response that it will revise its policies to conform with the Secretary's criteria with regard to subsection (i) above.

(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.

The agency has provided evidence that it has - in practice - been evaluating closing plans when an institution, (as required by the agency's current policy), notifies the agency that it intends to cease operations entirely. However, the agency must also ensure that its policies conform with the requirements of this section with regard to the agency's equitable treatment of students, to include the specification of additional charges, if any. The agency has criteria for both program closures and the evaluation of teach-out agreements, but must conform such requirements with the Secretary's criteria.

Analyst Remarks to Response:

The agency states in its response that it will revise its policies to conform with the requirements of this section, in regard to the agency's equitable treatment of students, to include the specification of additional charges, if any.

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

The agency's current program closure requirements specify that teach out agreements must only be with another ACEND-accredited institution. However, the agency has also amended its policy to ensure that should a teach-out plan include a program that is accredited by another recognized accrediting agency, it will notify the accrediting agency of that approval.

Analyst Remarks to Response:

The agency states that it is currently in the process of revising its policy with regard to teach-out plans. The agency must consider the applicability of this section for the DI programs that it accredits, and whether teach-out plans would ever include programs accredited by another recognized accrediting agency.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

Contrary to what the agency states in its narrative, the agency's current policy states that it will require such teach-out agreements for program closures if a dietetic internship program not housed in a regionally accredited institution is unable to provide all the instruction promised. However, the agency has since amended its policy and has stated in its narrative that it will not require institutions to enter into teach out agreements as part of its teach-out plan. Because the agency has since amended its teach-out plan and agreement policies, the agency must provide these for Department staff to review.

Analyst Remarks to Response:

The agency is currently in the process of revising its policy to conform with the requirements of this section.

(d) Closed Institution.

If an institution the agency accredits or preaccredits closes without a teach-out plan or agreement, the agency must work with the Department and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

The agency has recently amended its policies to conform with the requirements of this section. However, the agency must provide evidence of its final policy regarding closed institutions. The agency must also provide evidence of its application of its policy, as applicable.

Analyst Remarks to Response:

The agency states that it is currently in the process of revising its policy on closed institutions and will provide it in its forthcoming report to the Department along with evidence of its application.

§602.25 Due process

(h)(1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

(i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.

(ii) The financial information is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are determined by the agency.

(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.

(h)(2) An institution or program may seek the review of new financial information described in paragraph (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

The agency has recently approved a policy to conform with the requirements of this section to provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information, if the only deficiency is the institution's or program's failure to meet the agency's financial standard. The agency must provide the final approved policy for Department staff to review as well as evidence of its application, as applicable.

Analyst Remarks to Response:

The agency states that it is currently in the process of revising its policy on the treatment of new financial information related to the appeals process to conform with the Secretary's criteria and will provide the final revised policy, and evidence of application as appropriate, in its forthcoming report to the Department.

§602.26 Notification of accrediting decisions

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures--

((d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment; and

Though the agency has a policy for providing summary information on probation and adverse decisions, the policy does not clearly specify that it will provide the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment.

Analyst Remarks to Response:

The agency states that it is currently in the process of revising its policy on providing a brief summary within 60 days to conform with the Secretary's criteria, and will provide the final revised policy, and evidence of application as appropriate, in its forthcoming report to the Department.

PART III: THIRD PARTY COMMENTS

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