

**U.S. Department of Education**

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

**RECOMMENDATION PAGE**

1. **Agency:** Accrediting Council for Independent Colleges and Schools (1956/2006)

(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 offering certificates or diplomas, and postsecondary institutions offering associate, bachelor's, or master's degrees in programs designed to educate students for professional, technical, or occupational careers, including those that offer those programs via distance education.

4. **Requested Scope of Recognition:** The accreditation of private postsecondary institutions offering certificates or diplomas, and postsecondary institutions offering associate, bachelor's, master's or professional doctoral degrees in programs designed to educate students for professional, technical, or occupational careers, including those that offer those programs via distance education.

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

6. **Staff Recommendation:** 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 needs to document how it determined that its current doctoral standards are comparable to commonly accepted standards for ensuring quality in doctorate degree programs. As well, the agency needs to document its experience in accrediting the range of specific doctoral degrees for which it is seeking the expansion of scope. [§602.12(b)]

- The agency needs to have a clear written policy that requires it to have adequate representation of both academic personnel, and administrative personnel, as it makes its selections for site teams and decision-making bodies, including the individual Review Board Panels. In addition, the written policy needs to indicate what ACICS uses to designate a person to serve in one category, as distinguished from the other. Definitions of academic personnel and administrative personnel must be clear and consistent, as well as consistently applied in practice. Furthermore, the agency needs to provide clear evidence that it currently maintains adequate representation of both academic personnel, and administrative personnel, on its current site teams and all decision-making bodies. [§602.15(a)(3)]

- The agency needs to demonstrate that it evaluates student achievement against program-level data as appropriate to the occupational missions of the institutions it accredits, particularly where licensure, registration or certification is involved. §602.16(a)(1)(i)]

- The agency needs to ensure that its policy, in writing and in practice, is that all the commissioners are provided with the opportunity to see, and discuss, the complete institutional file before they determine whether an institution complies with the agency's standards. [§602.17(e)]

- The agency needs to complete its plans to provide each institution with a detailed written report that assesses the institution's performance with respect to student achievement that takes program-level outcomes into account. [§602.17(f)]

- The agency needs to document and elaborate on the criteria used to monitor licensure pass rates to ensure a consistent evaluation by agency staff, and by agency site team members. [§602.19(b)]

- The agency needs to demonstrate that its more detailed monitoring process has been successfully implemented and that the new information obtained is now satisfactory. [§602.19(d)]

- The agency needs to ensure that when an institution is found out of compliance with any agency standard, that the agency takes immediate adverse action, or else clearly requires the institution to come into

compliance within the maximum timeframes permitted by the criteria. Consequently, the agency also needs to clarify the point at which failure to meet a reporting threshold triggers non-compliance with an agency standard. [§602.20(a)]

- The agency needs to demonstrate that its regular systematic review process effectively involves all relevant constituencies, including but not limited to faculty, students, graduates, employers of graduates, and state regulatory authorities, as appropriate, and that the process consistently affords them a meaningful opportunity to provide input. [§602.21(a)(b)]
- The agency needs to demonstrate that it consistently and effectively invites comments from all of its constituencies, including but not limited to faculty, students, graduates, employers of graduates, and state regulatory agencies, as appropriate, and takes those comments into account before finalizing any proposed standards changes. [§602.21(c)]
- The agency needs to have a written policy that defines when substantive changes/proposed substantive changes are, or would be, sufficiently extensive to clearly require ACICS to conduct a new comprehensive evaluation visit. [§602.22(a)(3)]
- The agency needs to provide documentation that it comprehensively evaluates and verifies all the elements required of a teach-out agreement before approving it. [§602.24(c)(5)]
- The agency needs to clarify the cited matters, including the distinctions it makes between a re-hearing and an appeal, and to demonstrate how it ensures that adverse actions are ultimately made final in a timely way. [§602.25(f)(1)]
- The agency needs to submit actual examples of the required brief statements it provides summarizing the reasons for an adverse decision together with any official comments the affected institution may make. [§602.26(d)]

## **EXECUTIVE SUMMARY**

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

The Accrediting Council for Independent Colleges and Schools (ACICS) is a national institutional accreditor that was founded in 1912. The agency currently accredits over 850 institutions located in 46 states and Puerto Rico. The agency's recognition enables its institutions to establish eligibility to receive Federal student assistance funding under Title IV of the Higher Education Act of 1965, as amended (Title IV). The agency serves as the Title IV gatekeeper for over 850 of the institutions it accredits. Consequently, the agency must meet the Secretary's separate and independent requirements.

#### **Recognition History**

The Secretary of Education first recognized ACICS in 1956 under the agency's former name, the Accrediting Commission for Business Schools. In 1985, ACICS requested an expansion of scope to include its accreditation of master's degree programs in senior colleges of business, which was subsequently granted by the Secretary. Since that time, the Secretary periodically reviewed the agency and granted it continued recognition.

The last full review of ACICS took place at the June 2006 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). After that review the Secretary renewed the agency's recognition for five years, and granted the agency's request for an expansion of its scope of recognition to include its accreditation of institutions that offer programs via distance education. In addition, the Secretary requested a report on the agency's compliance with several criteria. That report was accepted by the Secretary.

The agency is currently requesting an expansion of scope to include professional doctoral degrees.

In conjunction with the current review, Department staff conducted an observation of the agency's Intermediate Review Committee (IRC) held in Washington, DC in November 2010. In addition, Department staff conducted an observation of an ACICS site visit to Stratford University's campus in Woodbridge, VA in February 2011.

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

### **§602.12 Accrediting Experience**

**(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.**

**(NOTE: Only recognized agencies seeking an expansion of scope need to respond.)**

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The recognition of ACICS currently covers the accreditation of private institutions offering programs, including distance education, leading to professional, technical or occupational careers up through the master's degree level. The agency is requesting an expansion of its current scope to include the accreditation of institutions that offer programs, including distance education, up through professional doctoral degrees.

This section of the criteria requires that ACICS demonstrate that it has granted accreditation covering the range of the specific degrees, institutions, and programs for which it seeks the expansion of scope. Other aspects are to be considered as they pertain to the agency's experience.

The agency had been informing schools (cf. last page of Exhibit 11) that "ACICS is authorized to approve programs at the doctoral level, but its scope of recognition by the US Department of Education permits eligibility for federal student aid only through the master's degree level." Where the ACICS authorization originated is not clear. The current petition narrative also states that "Since the doctorate is not included within ACICS' scope of accreditation as recognized by ED, accreditation does not qualify these institutions to participate in Title IV financial aid programs for students in these programs." How the current doctoral program students, graduates and the public are informed about the extent of the Secretary's recognition of ACICS is also not clear.

The agency has been accrediting doctoral degrees in business administration and in computer engineering since 2005. According to the December 2010 Policy Outline for the Doctoral Committee (Exhibit 6) some ACICS institutions have offered "professional 'advanced practice' doctoral degrees such as the Doctorate of Business Management (DBA) and the Doctorate of Computer Engineering (DCE). In addition, one institution accredited by ACICS offers the 'first professional' degree of Doctor of Pharmacy (D. Pharm.)." The Policy Outline also indicates that the agency has been conducting a "pilot project" over the last few years regarding its criteria for doctoral programs "for evaluating compliance

with these criteria.” What that means is unclear and the petition does not explain further.

The agency’s current criteria for the accreditation of doctoral programs (cf. ACICS Accreditation Criteria, Chapter 7: Standards for Doctorate Degree Programs) are generic and too loosely constructed to ensure consistency. For a significant example, the primary faculty requirement is that they be “adequate and competent,” and that “consideration shall be given to the academic preparation and experience of each instructor.” In addition, the ACICS standard notes that “Professional certification is not a substitute for a terminal degree.” However, there is no requirement that faculty members teaching in a doctoral program are expected to have any kind of professional certification, as appropriate. The agency needs to document how its current doctoral standards are comparable to commonly accepted standards for ensuring quality in doctorate degree programs.

The agency’s Accreditation Criteria currently outline professionally-oriented doctorate degrees as including “the J.D., Ed.D., DFA, DBA, etc., but excluding the Ph.D.” (cf. Exhibit 1, Title III, Chapter 7, Introduction, p. 67). In addition, the petition narrative indicated that the agency has recently proposed a clearer version that it would like to incorporate into its Accreditation Criteria (under Section 3-7-100: Nature of Doctorate Education). The proposed language distinguishes that “Unlike academic doctoral degrees that prepare students to work in academia or research, professional doctoral degrees are designed to make students experts in their fields and in the workplace. As such, the outcomes for those earning a professional doctoral degree involve using knowledge and techniques to purposefully address problems and opportunities in their workplace.”

The previously cited Policy Outline noted that part of the ACICS 2009 strategic plan was to seek “an expansion of its scope of accreditation to include these applied doctoral degrees.”

Furthermore, the Policy Outline notes that “first professional degrees in areas such as law (Juris Doctor, JD) and medicine (Medical Doctor, MD) have been designated as doctoral degrees but are clearly applied rather than research-based degrees. Recently, applied doctoral degrees have been established and officially recognized in a variety of allied health areas.” It is unclear if the agency intends to limit itself in any way, or to proceed to accredit doctoral programs for lawyers and medical doctors. Department staff finds the ACICS expansion of scope to be so broad that it cannot be justified based on the agency’s total experience, which is the accreditation of three doctoral programs to date.

Therefore, until the issues cited above are adequately addressed, a finding of compliance cannot be made.

Staff Determination:

The agency does not meet the requirements of this section of the criteria. The

agency needs to document how its current doctoral standards are comparable to commonly accepted standards for ensuring quality in doctorate degree programs. In addition, the agency needs to specify the limits of its requested scope of recognition. Furthermore, the agency needs to indicate how the current doctoral program students, graduates and the public are informed about the extent of the Secretary's recognition of ACICS.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to indicate how the current doctoral program students, graduates and the public are informed about the extent of the Secretary's recognition of ACICS. In addition, the agency needed to document how its current doctoral standards are comparable to commonly accepted standards for ensuring quality in doctorate degree programs. As well, the agency needed to specify the limits of its requested scope of recognition.

One issue noted in the draft staff analysis was how ACICS informed current doctoral program students, graduates and the public regarding the extent of the Secretary's recognition of ACICS. In response, the agency modified its website to highlight that the agency is recognized through the master's degree level. In addition, the agency has revised the appropriate section of its primary accreditation criteria handbook to indicate that the agency is recognized through the master's degree level and that the offered doctoral degrees are part of a pilot program. These revisions should prove helpful, especially the explanation in the accreditation criteria handbook, as the agency brings them to the attention of the public in general, and to the current doctoral program students in particular.

In response to the comparability of its doctoral standards, the agency response cited a comparison of ACICS standards with those of other national and regional accrediting agencies that was done by its Ad Hoc Committee on Doctoral Programs. The study evaluated the comparability of ACICS standards to commonly accepted standards for ensuring the quality of doctoral programs. Although the agency stated that its own committee found the ACICS doctoral standards comparable, ACICS provided no evidence of the work done by the committee, the specific standards used in the comparison or how the committee organized its work and reached its conclusions. The agency did note that although the committee found the ACICS doctoral standards comparable to those of other recognized accrediting agencies, it nonetheless recommended strengthening and clarifying the ACICS doctoral standards. However, there was no indication as to what those improvements were, or whether they were adopted and approved in accordance with the agency's standards revision process.

On one particular matter, ACICS noted that the faculty preparation standard (Section 3-1-541) states that "preparation of faculty members shall be academically and experientially appropriate to the subject matter they teach." In reference to that quoted standard, the agency stated that it requires "Therefore, doctoral program faculty teaching courses in a field that prepares students for required licensure or certification would be required to hold the necessary

certification, license or registration for that career field in addition to a doctoral or terminal degree.” However, as the ACICS policy is currently written, Department staff does not interpret the generic policy as clearly requiring faculty to have any particular credential in addition to a terminal degree. And since the current policy is not explicit, applicant programs would be free to interpret the cited standard in a broad and non-prescriptive way.

Another significant issue noted in the draft staff analysis was the lack of clarity regarding the limits of the agency’s requested expansion of scope to accredit professional doctoral degrees, including those offered via distance education. In its response, the agency reiterated what was clear in the original ACICS narrative submission – that the professional doctoral degree, by definition, does not include the Ph.D. However, the agency did indicate that it intends to limit itself, at least initially, to thirteen doctoral degrees and/or fields. They would include the J.D., Ed.D., DFA, DBA and Pharm.D, as well as Computer Engineering, Criminal Justice, Management, Nursing Sciences and Architecture. Furthermore, the medical fields would include the Doctor of Oriental Medicine (DOM), the Doctor of Veterinary Medicine (DVM) and the Doctor of Osteopathic Medicine (DO). The response narrative indicated that ACICS would “avoid” accrediting the Doctor of Medicine (MD), although that statement does leave the possibility open. It should also be noted that all of the professional doctoral programs could include those offered via distance education.

Department staff continues to find the agency’s statements to be insufficiently supported by the documentation provided. And without further documentation of the agency’s experience in accrediting additional doctoral programs, Department staff would be unable to recommend an expansion of scope beyond those three doctoral programs that the agency has already accredited in its pilot program (Doctor of Business Administration, Doctor of Computer Engineering, and Doctor of Pharmacy). In support, it should be noted that ACICS has been accrediting those three doctoral programs without the Department receiving negative commentary from interested parties.

However, until these matters are adequately addressed with supporting documentation a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to document how it determined that its current doctoral standards are comparable to commonly accepted standards for ensuring quality in doctorate degree programs. As well, the agency needs to document its experience in accrediting the range of specific doctoral degrees for which it is seeking the expansion of scope.

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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--**

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

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Since ACICS is an institutional accreditor it is required by the criteria to have both academic personnel, and administrative personnel, on all site evaluation teams, and on all policy and decision-making bodies. As a matter of practice, both academic and administrative personnel may be represented on ACICS visiting teams, the ACICS Council and on the subgroups of the Review Board that are selected to decide appeals.

However, the agency does not have a clear written policy that requires it to maintain an adequate representation of both of the required categories as it makes its selections. For on-site evaluators the current focus is on classifying persons by their subject matter specialty, and on whether they are associated with an ACICS institution. As well, the current focus for identifying Council members is on whether they were elected, appointed or serving as a public member. There is no selection designation to identify whether they are currently and primarily serving in an academic or in an administrative capacity.

In addition, the agency does not provide any indication as to what would qualify a person to be identified as either primarily an academic, or primarily an administrator. As a result, the agency does not distinguish and identify its decision-makers and site evaluators as primarily one or the other. Furthermore, the agency uses the extensive experience of retired persons without ensuring that they remain current with the latest changes and developments in their fields and/or previous professions. An examination of the current Council membership of 13 persons (two spots are temporarily unfilled) shows that, in essence, there are eight presidents/vice-presidents who are primarily administrators, four Chief Academic Officers who may be primarily occupied with administrative duties, and one associate professor.

Until these matters are addressed, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to have a clear written policy that requires it to have an adequate representation of both academic personnel, and administrative personnel, as it makes its selections for site teams and decision-making bodies, including the individual Review Board Panels. In addition, the written policy needs to indicate what ACICS uses to designate a person to serve in one category, as distinguished from the other. Furthermore, the agency needs to provide evidence that it currently maintains adequate representation of both academic

personnel, and administrative personnel, on its current site teams and decision-making bodies.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to have a clear written policy that requires it to have an adequate representation of both academic personnel, and administrative personnel, as it makes its selections for site teams and decision-making bodies, including the individual Review Board Panels. In addition, the written policy needed to indicate what ACICS uses to designate a person to serve in one category, as distinguished from the other. Furthermore, the agency needed to provide evidence that it currently maintains adequate representation of both academic personnel, and administrative personnel, on its current site teams and decision-making bodies.

In its response, ACICS indicated the recent revisions it made to its written policies in an attempt to come into compliance with the requirements of this section. First, the agency revised its bylaws to define academic and administrative representatives, but only as they are applied to the decision-makers, including those on the Review Board Panels. In that reference, an “academic representative is defined as someone currently or recently directly engaged in a significant manner in postsecondary teaching and/or research” and an “administrative representative is defined as someone currently or recently directly engaged in a significant manner in postsecondary institutional or programmatic administration.” Both of those definitions are clearly written and convey the commonly-accepted meaning of the terms.

However, the agency altered both of those definitions in its revised manual on policies and procedures where they are applied to ACICS on-site evaluators. When referring to site team evaluators an “administrator representative is defined as someone currently or recently directly engaged in a postsecondary program or institutional administration.” Unlike the definition for decision-makers, site visitors can have peripheral experience since they are not required to be involved in educational administration “in a significant manner.” As well, the definition of an academic representative on a site team also deletes the requirement that their experience be “significant.”

More important, however, is the agency’s determination that a practitioner representative can fulfill the role of an academic representative on a site evaluation team. The ACICS requirements regarding site team composition refers to an academic representative as “someone currently or recently directly engaged in postsecondary teaching and/or research 'and/or engaged as a practitioner in a professional setting'” (emphasis added). This equivalency is unacceptable since it is entirely possible for a practitioner to have no experience whatsoever as an academic in a postsecondary context.

Department staff notes other issues with the agency’s attempts to come into compliance with the requirements of this section. Despite the agency’s term “Review Board for Appeals” it is, in reality, a pool of persons from whom three

individuals may be chosen at any given time to hear an appeal. Since that is the case, the agency still needs to be specific in its written documents that any given panel must contain at least one academic representative and at least one administrative representative. The agency did revise its written policies recently to specify that at least one public representative be on any given three-person appeals panel.

Furthermore, the agency needs to clarify that without unusual circumstances one individual normally should not serve simultaneously in more than one representative category. Right now, the agency allows the public representative to also be counted as the academic representative, or the administrative representative, on a review board panel. The agency has not demonstrated any unusual circumstances to warrant an exception. As well, the agency needs to more clearly document its compliance with its revised policies when providing evidence. Department staff noticed that the agency submitted highlighted resumes with its response that appeared to count experiences that were over a decade old as meeting the new ACICS definitions requiring current or recent experience.

Perhaps the main issue underlying all these aspects of the agency's compliance is the apparent reluctance of ACICS to go beyond an absolute minimalist response to the requirements of this section. This criterion expects a good faith effort by an accrediting agency to have both academic and administrative personnel reasonably represented on all its site teams and decision-making bodies. Even the term "personnel" implies a reasonable plurality, a balanced representation, or at least two or more persons representing each category whenever possible.

It has already been admitted by ACICS that the agency's decision-making bodies are almost exclusively represented by administrators. Instead of making an effort to expand representation by academics, ACICS has changed its written policies to make permanent its already one-sided representation by administrators. Furthermore, ACICS revised its bylaws to make the status quo at ACICS seem acceptable, that is, to have only one academic representative among its numerous decision-makers. More telling perhaps is the agency's willingness to equate a practitioner with an academic in its published definitions for composing site teams.

In any case, Department staff cannot reconcile ACICS' approach with either the spirit of the regulation that expects balanced representation, or the literal words of the regulation that expects a plurality of persons representing each of the specified categories. Therefore, until the issues cited above are adequately addressed, a finding of compliance cannot be made.

#### Staff Determination:

The agency does not meet the requirements of this section of the criteria. The agency needs to have a clear written policy that requires it to have adequate representation of both academic personnel, and administrative personnel, as it

makes its selections for site teams and decision-making bodies, including the individual Review Board Panels. In addition, the written policy needs to indicate what ACICS uses to designate a person to serve in one category, as distinguished from the other. Definitions of academic personnel and administrative personnel must be clear and consistent, as well as consistently applied in practice. Furthermore, the agency needs to provide clear evidence that it currently maintains adequate representation of both academic personnel, and administrative personnel, on its current site teams and all decision-making bodies.

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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:**

**(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.**

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The agency's expectations regarding success with respect to student achievement are based primarily in Section 3-1-110: Institutional Effectiveness. In addition, implementation of that standard is supported by Section 2-1-809: Retention and Placement, the "Guidelines and Instructions for Completing the Annual Institutional Report" (Exhibit 51), and the document entitled "Institutional Effectiveness: A Guide to Implementation" (Exhibit 58).

In summary, the agency requires that each institution annually publish placement and retention goals based on the retention and placement rates from data reported in each of the previous three Annual Institutional Reports (AIRs). Using the data, the institution determines ways to improve the percentages and processes, and continues to evaluate its goals and activities annually to ensure that it makes adjustments as a result of its own evaluation.

The agency has established baseline institutional-level thresholds at 60 percent for retention and 65 percent for placement rates. If an institution's rates fall below baseline rates in the AIR, the agency may require it to submit an improvement plan for review as part of the agency's monitoring of the institution's effectiveness between visits. The agency does not have any thresholds for licensure pass rates.

In addition, each institution must develop and implement an Institutional Effectiveness Plan (IEP) consistent with its mission that identifies how it will assess and continuously improve its educational programs and processes, and describe its ability to meet the educational and occupational objectives of its programs. Each IEP must present data on student retention, student performance rates, the levels of employer and graduate satisfaction, and student learning outcomes.

The IEP is reviewed by the ACICS Institutional Effectiveness Committee (Cf. Policies and Procedures Manual, Chapter 6), where the IEP is evaluated for its articulation of institutional goals for continuous improvement. The IEP is expected to show how the institution used the data to compare and identify the changes made and the changes still needed, thereby improving the educational process. In addition, the agency expects each institution to evaluate job-related competencies that address both academic and personal skills such as work attitude, motivation, critical thinking skills and communication skills as part of its assessment of student learning.

Under student evaluation and program assessment, the agency requires the outcomes for distance education to be comparable to those of residential education. In either case, the institution is expected to demonstrate that student learning has occurred by using baseline data, as appropriate, that may include GPA, pre-tests and post-tests, portfolios, standardized tests, professional licensure exams and other measures of skill and competency attainment.

The institution submits its most recent IEP with its self-study and makes the IEP available on-site for verification and evaluation by the site-visit team. That data is then examined and evaluated by the visiting teams to assess the institution's or program's compliance with the ACICS achievement standards. The actions of the on-site team, together with the documentation provided by the agency, adequately demonstrate the agency's effective application of its standards regarding success with respect to student achievement.

The agency does annually collect programmatic level data (in the AIR) on student outcomes retention and placement rates. It is to be noted that the AIR does not specifically require program-level reporting of licensure pass rates. However, it is unclear what review the agency does of program-level data to assess the success of the institution's educational program in meeting its objectives as part of the agency's assessment of the institutional success in meeting agency standards. As an institutional accrediting agency that offers vocational programs, the Department expects the agency to collect and assess the program-level data as an effective mechanism to support and determine the institution's success in meeting its mission and serving the educational goals of all students.

Staff Determination:

The agency does not meet the requirements of this section of the criteria. The

agency needs to demonstrate that it evaluates student achievement against program-level data as appropriate to the occupational missions of the institutions it accredits.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to demonstrate that it evaluates student achievement against program-level data as appropriate to the occupational missions of the institutions it accredits.

In response, ACICS highlighted certain aspects of the Annual Institutional Report (AIR) that the agency requires from each institution. Although the agency does request data on individual programs for which students must take licensure/certification/registration examinations, there is no guidance from the agency as to what is an acceptable pass rate on those examinations.

To ensure the consistent evaluation of student achievement at the institutional level ACICS has established baseline institutional-level thresholds at 60 percent for retention and 65 percent for placement rates. However, the agency provides no baselines or other guidance to ensure the consistent evaluation of student success for individual programs within the institution. A highly successful program could compensate in the overall institutional average for a program where the students are under-achieving. The failure of the agency to provide a consistent basis for evaluating student achievement at the program-level, particularly where licensure, registration or certification is involved, is especially troubling. Until the agency satisfactorily addresses these issues a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that it evaluates student achievement against program-level data as appropriate to the occupational missions of the institutions it accredits, particularly where licensure, registration or certification is involved.

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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--**

- (e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency's standards; and**
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Agency staff prepares a file review worksheet that contains information about each institution regarding placement and retention rates, financial instability, pending complaints, grant expiration date and a summary of the team findings. The agency then uses that material in a two-step process that analyzes the self-study and supporting documentation, the team report, the institution's response, the audited financial statements and any third party comments received about the institution.

First, all the information is given to the ACICS Intermediate Review Committee (IRC), which evaluates the materials in order to make an accreditation recommendation (that will then be considered by the decision-making Council). The IRC members include former Commissioners and experienced current on-site evaluators who read the entire institutional file assigned for review. After reading the files and all of the documents, each IRC member makes a presentation and a recommendation to the IRC for consideration.

The IRC recommendation then goes to the appropriate sub-committee (called a File Review Committee) of the full ACICS Council. There are three File Review Committees and each one gets a third of the complete school files that were recently reviewed by the IRC. At least one commissioner reads the full file, which includes the self-study, site report, school response, financial information, and IRC recommendations. The commissioner then defends his or her recommendations to the other members of his/her File Review Committee, which then presents its findings to the full Council where the final decision on each institution is rendered. Each action taken by the Council is recorded in the minutes of the Council meetings.

However, it is difficult to say that the whole Council conducts its own analysis of the school's complete file when only three persons out of the fifteen commissioners normally see it. ACICS needs to ensure that all the commissioners are provided with the complete institutional file before they determine whether an institution complies with the agency's standards. Until it does so, a finding of compliance cannot be made.

#### **Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to ensure that all the commissioners are provided with the complete institutional file before they determine whether an institution complies with the agency's standards.

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

The draft staff analysis found that ACICS needed to ensure that all the commissioners are provided with the complete institutional file before they determine whether an institution complies with the agency's standards.

In response, ACICS plans to ensure that each commissioner will have access to the entire file before voting on the institution, and that access should be available

to the commissioners during their next meeting in August 2011.

However, the revisions that the agency has made to its published materials make it clear that the commissioners are not expected to discuss their analysis of a school's materials during the commission meeting, unless it involves an initial accreditation or to remove an institution's accreditation by denial or suspension. For a renewal of accreditation the recommendations of the sub-committees are presented to the commissioners for their approval only.

The plan to make each school's materials available to all the commissioners before they vote is a good and necessary first step for the agency to come into compliance with the requirements of this section. However, the agency still needs to make it clear in its published materials, and in actual practice, that all recommendations must be presented to the full Council for not only approval, but potential discussion as well. Until it does so, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to ensure that its policy, in writing and in practice, is that all the commissioners are provided with the opportunity to see, and discuss, the complete institutional file before they determine whether an institution complies with the agency's standards.

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**(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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After the on-site evaluation, ACICS provides each institution with a written assessment of the areas where the institution is not in full compliance with each of the agency's standards, together with areas needing improvement. Each site team report includes an assessment of the institution's performance with respect to student placement and retention rates and whether the programs of study are meeting the occupational objectives of the students and the needs of the community.

In addition, the Council considers the institution's retention and placement rates as reported in the Annual Institutional Report. If these rates fall below the established threshold, the institution must submit an improvement plan. The Council may also conduct a special site visit to the institution or direct the school

to show why its accreditation should not be withdrawn for failure to maintain minimally acceptable student achievement levels.

However, it is difficult to say that the agency provides the institution with a written report that is sufficiently detailed when it assesses the institution's performance with respect to student achievement. Agency reports regularly indicate whether an institution met the institutional thresholds for retention and placement, but not much more. Program-level outcomes need to be taken into consideration as well. Until the agency addresses this matter, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to provide each institution with a detailed written report that assesses the institution's performance with respect to student achievement that takes program-level outcomes into account.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to provide each institution with a detailed written report that assesses the institution's performance with respect to student achievement that takes program-level outcomes into account.

In response, ACICS is taking the following steps to bring itself into compliance with the requirements of this section. First, the agency plans to modify its site visit report templates and procedural documents for consideration by the Council at its next regular meeting in August 2011. Next, if the Council approves those changes, then accredited institutions will be informed of the changes in December 2011; the changes will be incorporated into evaluator and staff training materials; and the training will be provided for visit teams to formally include in the detailed written team report an assessment of each program's performance with respect to student achievement. Finally, the Council will receive and review those revised reports beginning with its decision-meeting in April 2012. If all goes as planned, these changes should bring the agency into compliance with the requirements of this section. However, until these steps are completed, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to complete its plans to provide each institution with a detailed written report that assesses the institution's performance with respect to student achievement that takes program-level outcomes into account.

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**§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.**

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The agency monitors accredited institutions by requiring each of them to keep ACICS fully informed of its activities by submitting annual institutional reports, financial reports and applications for substantive changes. If those documents are not submitted in a timely fashion, or if they disclose inadequacies in areas such as student outcomes, the institution must submit additional reports on a closely defined schedule or face the revocation of its accreditation.

The monitored information in the Annual Institutional Reports includes data regarding enrollment, individual programs, faculty changes, student-faculty ratios, default rates and demographic information. The agency reviews the data from these reports to ensure that an institution remains compliant with the agency standards.

In addition, the agency may conduct unannounced visits to review records and to interview students and staff regarding a previously-cited problem area, or to verify responses to previous requests for information regarding complaints or other negative information. Agency policy also permits ACICS to conduct a visit with a "Fast Assessment and Compliance Team" (FACT) that allows the agency to quickly investigate alleged improper practices.

Although the agency uses of a variety of monitoring approaches, and collects a significant amount of data from its institutions annually, it is not entirely clear to Department staff how the agency analyzes all that data. This section of the criteria requires an agency not only to collect, but also to analyze key data and indicators. Therefore, the agency needs to further explain what its analysts look for in their review, beyond the placement and retention thresholds. More specifically, the agency needs to document and elaborate on the criteria used to guide its review of other key data and indicators, including financial information. Until it does so, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to document and elaborate on the criteria used to guide its review of key data, other than placement and retention thresholds, including financial and other information.

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

The draft staff analysis found that ACICS needed to document and elaborate on the criteria used to guide its review of key data, other than placement and retention thresholds, including financial and other information.

In its response, ACICS explained the significant analysis done by the agency annually to monitor the cohort default rates of its institutions, as well as the detailed analysis performed by the agency of the financial health of those institutions.

Regarding licensure pass rates, ACICS collects information each year on program trends, if applicable. However, it appears that the agency does not do much, if anything, with that annually-collected information. It appears that the agency sits on that data until a site visit happens to occur. The agency reported that the site visitors use the data, as well as their own expertise in the subject field, to determine what level of pass rates is sufficient to demonstrate an acceptable level of quality. No mention was made of how the agency uses the licensure pass rate information between any occasional site visits, or how the agency ensures consistency in the evaluation of licensure pass rate information by visiting teams. Until it does so, a finding of compliance cannot be made.

### **Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to document and elaborate on the criteria used to monitor licensure pass rates to ensure a consistent evaluation by agency staff, and by agency site team members.

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**(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.**

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As previously noted, ACICS monitors the overall growth of its accredited institutions through the annual reporting process, which collects current headcount enrollment data. The agency defines significant enrollment growth as 100 percent or more within the reporting period of July 1 – June 30. (The agency has set minimum enrollment at 200 students so that the formula will not trigger institutions with small numbers of students.) If an institution has experienced a significant enrollment growth, then ACICS written policy requires that the institution be reported to the ACICS Institutional Effectiveness Committee (IEF).

According to published agency policy (cf. ACICS Policies and Procedures Manual, Chapter 30: Monitoring Significant Enrollment Growth), the IEF will review the type of campus and whether it is new, as well as the number of new programs and the mode of educational delivery, in order to determine why the

institution is experiencing the rapid growth. The IEF also reviews information on the institution's financial reporting status and student outcomes data, together with any complaints and adverse information to determine the impact, if any, that the rapid growth has had on the institution's finances and educational quality.

After reviewing this information, if the IEF determines that the rapid rate of growth is diminishing education quality, then the institution will be required to report back to the ACICS Council on a recurring basis regarding key resource indicators, including faculty/student ratios, student services and staffing levels, etc.

Although the agency documentation included a list of institutions that experienced rapid growth (Exhibit 129), and the minutes of the meeting where that list was considered (Exhibit 57, p. 48-49), the main outcome of the pertinent discussion appeared to be a request by the IEF to increase the factors to be included on future rapid growth lists. It was unclear to Department staff whether any recommendation was made by the IEF regarding required follow-up reports for any, or all, of those institutions identified as having experienced rapid growth. Until this matter is clarified, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to ensure that it consistently monitors the growth of programs at institutions that have been identified as experiencing significant enrollment growth.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to ensure that it consistently monitors the growth of programs at institutions that have been identified as experiencing significant enrollment growth. More specifically, it could not be previously determined from the materials provided whether the agency requested follow-up reports from the institutions identified as having experienced rapid growth.

In response, the agency clarified that it found no immediate cause for concern in the data that was already collected in the monitoring process. Nevertheless, the data did prompt the agency to realize that the current monitoring did not provide the level of detail that was needed. As a result, the agency decided that additional information will be sought when the next set of monitoring reports are requested. Therefore, the agency will need to demonstrate that the more detailed monitoring process has been successfully implemented and that the information it procured is now satisfactory. Until it does so, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that its more detailed monitoring process has been successfully implemented and that the new information obtained is now

satisfactory.

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### **§602.20 Enforcement of standards**

**(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must--**

**(1) Immediately initiate adverse action against the institution or program; or**

**(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed--**

**(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;**

**(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or**

**(iii) Two years, if the program, or the longest program offered by the institution, is at least two years in length.**

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When an institution is not in compliance with the ACICS Accreditation Criteria, the agency may exercise defined options that vary based on the severity and magnitude of the identified noncompliance. The options allow the agency to take immediate adverse action against the institution or to grant the institution additional time in which to come into compliance.

The agency does have published enforcement policies, including the necessary timelines that are in conformity with the requirements of this criterion (cf. ACICS Accreditation Criteria, p.25). In addition, most of the documentation provided by the agency with the petition indicated that the agency's actions involving each school fell within the timelines required by this criterion.

However, the petition also included a document that raises an issue needing clarification (cf. Exhibit 54: Schedule of Sanctions for Retention and Placement). The document is a summary list that deals with failure to meet student outcomes thresholds. It looks as if an institution could be "on reporting" for several years, but not be otherwise sanctioned for failure to meet the minimum thresholds. As well, it appears that institutions are required to develop plans, attend an ACICS workshop or host a visit, but not necessarily be found out of compliance with the agency's standards, even though there is an identified deficiency.

The primary problem is if an institution can be given a reporting timeframe for meeting the ACICS thresholds, and that timeframe exceeds the maximum specified by this section of the criteria for correcting deficiencies, then ACICS would be out of compliance with the requirements. Until the agency clarifies this

matter, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that when an institution is found out of compliance with any agency standard, that the agency takes immediate adverse action, or else clearly requires the institution to come into compliance within the maximum timeframes permitted by the criteria.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to ensure when an institution was found out of compliance with any agency standard, that the agency takes immediate adverse action, or else clearly requires the institution to come into compliance within the maximum timeframes permitted by the criteria. The previously submitted documentation indicated that ACICS could find an institution in non-compliance with a standard, but not sanction that institution for its non-compliance within the timeframes specified in the requirements of this section. The documentation appeared to indicate that an ACICS institution could be “on reporting” for several years, but not be otherwise sanctioned for failure to meet a standard set by ACICS. That is, an institution would not necessarily be found out of compliance with the agency’s standards in a timely manner, even though there was an immediately-identified deficiency.

The agency’s response indicated that there is a significant difference between ACICS’ understanding of the issue and that of the Department. For example, the agency sets a clear threshold for compliance with its student achievement requirements. However, the agency then appears to say that an institution must be in non-compliance for a significant amount of time before the agency will actually declare that institution in non-compliance and use the mandated timeframes for coming into compliance. The agency’s narrative tried to compare quality improvement activities with remediation activities, thereby, in effect, equating an institution’s dangerous approach to a threshold with actually crossing that threshold.

The agency is revising its materials (cf. Exhibit 236) to advise its institutions to come into compliance with the timeframes listed in the Department’s regulations or be found in non-compliance. In actuality, those timeframes are for institutions to come into compliance that have already been found in non-compliance with one or more agency standards. To equate the two different scenarios only compound the confusion. Further confusion is engendered by the proposed ACICS template letter (cf. Exhibit 237) that informs institutions “Continued performance below these thresholds will lead to a finding by the Council that the institution is out of compliance with its standards for Retention/Placement. If the institution fails to demonstrate improvement in fulfilling Council’s specified targets and within a specified timeframe, it will be found out of compliance and be subject to withdrawal of its current grant of accreditation by Council action.”

To be clear, however, the agency’s written materials need to distinguish between

the quality improvement efforts made prior to crossing a threshold, and the remediation efforts made after actually crossing that threshold. When an agency has determined that an institution has crossed a definitive threshold and thereby failed to meet the agency's requirements, then the agency needs to begin its enforcement activities immediately. That having been said, the agency is not precluded from granting the institution a limited extension to come into compliance for good cause. If the institution is not actually in non-compliance with some standard, then by definition, that institution cannot be given an extension for good cause to come into compliance.

One possible solution for the case at hand would be to have the agency's standard clearly state the conditions for an institution to be found in non-compliance. For example, an institution that does not meet the student achievement threshold for two successive years is automatically in non-compliance with the agency's standards. Then the time frames specified in the Secretary's criteria would automatically need to be enforced (and which permits limited non-automatic extensions for good cause). Until the agency clarifies this matter further, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to ensure that when an institution is found out of compliance with any agency standard, that the agency takes immediate adverse action, or else clearly requires the institution to come into compliance within the maximum timeframes permitted by the criteria. Consequently, the agency also needs to clarify the point at which failure to meet a reporting threshold triggers non-compliance with an agency standard.

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**§602.21 Review of standards.**

- (a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.**
- (b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review--**
- (1) Is comprehensive;**
  - (2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;**
  - (3) Examines each of the agency's standards and the standards as a whole; and**
  - (4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.**

ACICS has developed an integrated approach to ensure that its program of review is regular and comprehensive. The review is conducted annually and focuses on different parts of the accreditation criteria. As a result, over the five-year period all of the standards have been reviewed with opportunities for comment made available to the agency's constituencies (cf. Policies and Procedures Manual, Chapter 44: Council Policy Development).

Each annual survey asks the ACICS constituencies, including member institutions, evaluators, commissioners and staff, to focus on the selected standards with regard to their relevancy and adequacy. That is, the relevancy of the standard to the educational/training needs of students, and the adequacy of the standard to evaluate the quality of education/training provided by the institution. The results of the annual survey are considered during the agency's policy meetings where issues can result in proposed revisions of standards and a request for further comments from the constituents.

The agency publishes the final changes to the standards with its rationale based on the comments received and notifies the constituency of the effective implementation date following each Council meeting. Additionally, the agency includes proposed changes in the standards, with edits of the current standards in the proposed changes and requests comments in a form supplied with the publication notice.

In addition, the agency assesses standards informally during Council meetings by reviewing the frequency with which the team reports cite various standards. If any issues or concerns arise in the review, they are forwarded to the appropriate agency committee for further action. Also, the agency has consultants analyze aspects of the standards for potential improvement, as discussed in the petition narrative.

However, when examining the documentation provided by the agency (cf. Exhibit 107: Memo to ACICS Institutions and Other Interested Parties) it is not clear who actually receives the initial invitation to comment on the review, as appropriate. Department staff noted that the responses to the ACICS memo were limited to one accrediting agency director, several administrators and administrative staff from ACICS schools, a compliance officer who responded for her college system, and a college system president who submitted 19 identical sets of comments, that is, one for each of the 19 schools in his system giving the appearance of a widespread response.

This section of the criteria expects an accrediting agency to involve all relevant constituencies in the review of standards, and to afford them a meaningful opportunity to provide input into that regular review. ACICS needs to provide evidence that it is effectively reaching out to all of its constituencies, including faculty, students, graduates and employers of graduates. Currently, it is not clear if the agency's involvement of constituencies goes much beyond school administrators, and in at least two cases, whether the ACICS invitation to

comment gets stopped at the system-wide corporate level. Until this issue is addressed, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that its regular systematic review process effectively involves all relevant constituencies, including faculty, students, graduates and employers of graduates, as appropriate, and that the process consistently affords them a meaningful opportunity to provide input.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to demonstrate that its regular systematic review process effectively involves all relevant constituencies, including faculty, students, graduates and employers of graduates, as appropriate, and that the process consistently affords them a meaningful opportunity to provide input.

In its response, the agency indicated that it is piloting a survey process through which all students at institutions under review will be asked to complete an anonymous electronic survey. Whether or not this new process will obtain the desired documented input from students still remains to be seen.

In addition, the agency's response included a document that showed the agency had sent out almost 2000 emails regarding its systematic review process. It appeared that approximately 25 percent of the 2000 addressees actually opened the email and approximately 10 percent of the 2000 addressees actually opened the link to the standards review that was contained in the email. Although the documentation did provide evidence that the agency contacted 2000 constituents, no other evidence was provided to show how effectively the agency involves its constituencies in the systematic review process. Until further evidence is forthcoming, a finding of compliance still cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that its regular systematic review process effectively involves all relevant constituencies, including but not limited to faculty, students, graduates, employers of graduates, and state regulatory authorities, as appropriate, and that the process consistently affords them a meaningful opportunity to provide input.

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**(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must--**

**(1) Provide notice to all of the agency's relevant constituencies, and**

**other parties who have made their interest known to the agency, of the changes the agency proposes to make;**  
**(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and**  
**(3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.**

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As noted under the previous section, during Council meetings a review is conducted of the frequency with which various standards are cited in team reports. If issues or concerns arise about the interpretation given to certain standards cited in the team report, the agency assigns the issues to the appropriate committee for further action.

In addition, the Council will receive proposals for changes to the criteria, policies and procedures at any time of the year when it can approve the proposed changes and submit the proposals for comment to its constituents (identified in the agency narrative as ACICS accredited members, state and federal regulatory officials, and the public). The agency considers all comments received from constituents before adding, deleting revising or otherwise making changes to its standards. The petition documentation provided evidence that ACICS does initiate action to revise its standards within 12 months and to complete that action within a reasonable period of time.

Before finalizing any standards changes an accrediting agency must first notify its constituencies and other interested parties, give them a chance to comment on the proposed changes, and then take those comments into account. The effective involvement of constituencies and other interested parties, as appropriate, is central to compliance with the requirements of this section. However, as also noted under the previous section, it is not clear how effectively ACICS notifies all its constituents and interested parties, and whether those constituents effectively include faculty, students, graduates and employers of graduates. More specifically, it is not clear who regularly receives the invitation to comment, and whether that invitation reaches beyond the administrators of the school, or of the central office of an entire school system.

ACICS needs to provide evidence that it is effectively reaching out to all of its constituencies, including faculty, students, graduates and employers of graduates before finalizing any proposed standards changes. Until this issue is addressed, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that it consistently and effectively invites comments from all of its constituencies, including faculty, students, graduates and employers of graduates, as appropriate, and takes those comments into

account before finalizing any proposed standards changes.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to demonstrate that it consistently and effectively invites comments from all of its constituencies, including faculty, students, graduates and employers of graduates, as appropriate, and takes those comments into account before finalizing any proposed standards changes.

In its response, ACICS noted that it sends out a memorandum containing proposed changes to all member institutions and other unnamed constituents, and posts the memorandum to its website. Interested parties are given a minimum of 30 days to respond, and the cutoff date for comments was not indicated in the agency's narrative.

To encourage participation in the comment period the agency provides a web-based opportunity to propose questions, and reports that the agency is pleased with the amount of participation that this webinar has generated. The provided sample of questions from one webinar participant notwithstanding (cf. Exhibit 239), the agency has not demonstrated that it consistently and effectively invites comments from all of its constituencies, including faculty, students, graduates and employers of graduates, as appropriate, and takes those comments into account before finalizing any proposed standards changes. Until evidence that addresses the consistent and effective involvement of the cited constituencies is provided by the agency, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate that it consistently and effectively invites comments from all of its constituencies, including but not limited to faculty, students, graduates, employers of graduates, and state regulatory agencies, as appropriate, and takes those comments into account before finalizing any proposed standards changes.

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**§602.22 Substantive change.**

**(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 recently-revised (December 2010) policy that directs ACICS staff to contact an institution to “discuss” the institution’s substantive change applications and/or notifications, if over four of them have been submitted simultaneously or over a six-month period.

After the discussion, ACICS will decide “if” it will conduct a full team visit to the institution. Furthermore, the ACICS policy lists the factors to be “considered” by the agency in making its decision.

In addition, the petition narrative notes that ACICS has not experienced a situation which necessitated a comprehensive evaluation as a result of an institution’s formal submission of extensive substantive changes.

In summary, the ACICS policy indicates that a minimum of five institutional changes and/or proposed changes will trigger a discussion and consideration by the agency to possibly conduct a new comprehensive evaluation visit. However, the policy does not define when those changes/proposed changes are, or would be, sufficiently extensive to “require” ACICS to conduct a new comprehensive evaluation visit. Until it does so, a finding of compliance cannot be made.

#### Staff Determination:

The agency does not meet the requirements of this section of the criteria. The agency needs to have a written policy that defines when substantive changes/proposed substantive changes are, or would be, sufficiently extensive to clearly require ACICS to conduct a new comprehensive evaluation visit.

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

The draft staff analysis found that ACICS needed to have a written policy that defines when substantive changes/proposed substantive changes are, or would be, sufficiently extensive to clearly require ACICS to conduct a new comprehensive evaluation visit.

In its response, ACICS noted several proposed revisions to its written materials intended to expand upon the potential changes that may, or may not be, sufficiently extensive to result in a new comprehensive evaluation visit. Only two of the proposed revisions, however, actually attempt to define when substantive changes/proposed substantive changes are, or would be, sufficiently extensive to require ACICS to conduct a new comprehensive evaluation visit.

The first revision in question is found in the “Memorandum to the Field” (cf. Exhibit 244) where it states that “The Council, at its discretion, may order a comprehensive on-site evaluation of the institution if proposed substantive changes are so extensive that the institution’s capacity to maintain compliance with accreditation standards while implementing the changes requires an immediate assessment by the Council.” The second revision is found in the revised “Policies and Procedures Manual” (cf. Exhibit 224, Chapter 28) where the question is posited “Are the types and/or number of changes proposed or made by an institution so extensive or substantial that the nature and scope of

the accredited institution will no longer be the same and in its place a new institution has evolved? If the answer to this question is “yes,” a comprehensive visit is required.”

The agency is awaiting comments from the field regarding the proposed revisions before anything is made final, and it is unknown at this time what further changes to the proposed policies may be made as a result of the additional discussions. Therefore, until a final definitive policy is adopted by the agency, a finding of compliance cannot be made.

Staff Determination:

The agency does not meet the requirements of this section of the criteria. The agency needs to have a written policy that defines when substantive changes/proposed substantive changes are, or would be, sufficiently extensive to clearly require ACICS to conduct a new comprehensive evaluation visit.

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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:**

**(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 ACICS requirements corresponding to this section of the criteria are included in the agency's written policies covering the teach-out process (cf. ACICS Policies and Procedures Manual, Chapter 13: Closing of an Institution and Teach-Out Process). This policy clearly requires that the teach-out agreement be approved by ACICS and that the agreement must be with another accredited institution.

In addition, the ACICS policy requires the teach-out agreement to demonstrate that students will receive, without additional charges, all of the instruction promised but not yet provided by the closing institution; and that the teach-out institution is geographically proximate to the closing institution or otherwise can provide students with reasonable access to its programs and services. Furthermore, the institution must have the necessary experience, resources and support services to provide an educational program that is of acceptable quality and is reasonably similar in content, structure and scheduling to that provided by the closing institution. The institution must be stable and in good standing with its own accrediting agency. As well, the teach-out must provide for the equitable treatment of students and to clarify if there are any additional charges, including who is responsible to pay them.

As previously noted, the agency provided a sample ACICS staff teach-out process checklist (Exhibit 194) as documentation of what the agency uses to ensure the completeness of the teach-out process. The sample ACICS checklist covers an extensive variety of factors to be considered. Although the preceding paragraph delineates numerous requirements that are explicitly included in the agency's official policy statement, not all of them are included on the checklist. Therefore, ACICS needs either a checklist that corresponds more completely with the ACICS written policy on teach-out agreements, or some other evidence that it is comprehensively verifying all the requirements that ACICS has declared it will enforce.

In summary, ACICS needs to provide evidence that documents how the agency actually enforces its written policy to only approve teach-out agreements that satisfy all the requirements specified by this section of the criteria. Until it does so, a finding of compliance cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to provide evidence that documents how ACICS enforces its written policy to only approve teach-out agreements that satisfy all the requirements specified by this section of the criteria.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to provide evidence that documents how ACICS enforces its written policy to only approve teach-out agreements that satisfy all the requirements specified by this section of the criteria. The evidence would need to show that ACICS was comprehensively verifying all the teach-out requirements that the agency declared it would

enforce.

In response, the agency recently revised its written policy and expanded its teach-out checklist to better ensure that ACICS would not overlook basic teach-out requirements throughout its review of the overall process. However, the agency provided no evidence that those preliminary revisions to the process have been field-tested and found to be adequate. The revised teach-out checklist does not sufficiently reflect the qualitative criteria/factors that ACICS may be using to determine the adequacy of the teach-out agreement.

As a result, the agency did not provide evidence of its review of a teach-out agreement that evaluated the comparability of the teach-out institution for, among other basics, a program of similar content, structure and scheduling; what services etc. would be provided; and does the teach-out contract agreement specify which institution is responsible for what and when, etc. Until it does so, a finding of compliance cannot be made.

Staff Determination:

The agency does not meet the requirements of this section of the criteria. The agency needs to provide documentation that it comprehensively evaluates and verifies all the elements required of a teach-out agreement before approving it.

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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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In the event that an adverse action is decided by the ACICS Council, the affected institution has two opportunities for due process. The adversely affected institution may request a hearing to reconsider the Council's decision at the next regularly scheduled Council decision meeting (cf. ACICS Policies and Procedures Manual, Chapter 49: Hearings). The only exception to this process is an initial grant of accreditation, which is only appealable to the ACICS Review Board.

It was not clear to Department staff whether an institution is offered either type of due process or if an institution, except as noted, is required to avail itself of the opportunity for a re-hearing before requesting an appeal before the Review Board. If an institution is permitted, except as noted, to take advantage of both a re-hearing before the Council and an appeal before the Review Panel, Department staff is concerned that a final decision may be postponed beyond the normal limits. The agency will need to clarify this matter.

The other opportunity for due process, which is the focus of this section of the Secretary's Criteria, is the opportunity to appeal, given upon written request, to the ACICS Review Panel prior to the adverse action becoming final (cf. ACICS Accreditation Criteria, Section 2-3-600: Review Board Appeal Process). The agency's written policy affirms that the Review Panel does not include current members of the ACICS Council, that the Review Panel is subject to the ACICS ethical and conflict of interest policies, and that the agency recognizes the right of the institution to employ counsel. In addition, the Review Panel has the authority to affirm the original decision of the ACICS Council, and the Review Panel's affirming decision takes immediate effect (cf. Exhibit 205). Furthermore, the Review Panel has the authority in written policy to remand the matter back to the ACICS Council for further consideration.

ACICS has submitted evidence documenting its compliance with most of the requirements of this section. However, the agency did not document how it implements its policies when the original decision of the ACICS Council has been amended or reversed by the Review Panel and then sent back to the Council for discussion and final action. In particular, there was no documentation provided that the Review Panel identifies specific issues that the Council must address when the Review Panel remands the adverse action to the Council for further consideration. Until appropriate evidence is provided, a finding of compliance cannot be made.

(Department staff realizes that ACICS may not have had occasion to process

certain appeals, including an appeal that was remanded back to the Council after the new regulations became effective. If that circumstance is entirely or partially accurate, then ACICS should present that information in its response to the draft staff analysis.)

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to provide documentation that it follows its written policies regarding the disposition of appeals under the cited circumstances, or to confirm that the ACICS Review Panel has not had occasion to amend, reverse or remand an adverse action. In addition, the agency needs to clarify the distinctions it makes between a re-hearing and an appeal, and to demonstrate how it ensures that adverse actions are ultimately made final in a timely way.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to provide documentation that it follows its written policies regarding the disposition of appeals under the cited circumstances, or to confirm that the ACICS Review Panel has not had occasion to amend, reverse or remand an adverse action. In addition, the agency needed to clarify the distinctions it makes between a re-hearing and an appeal, and to demonstrate how it ensures that adverse actions are ultimately made final in a timely way.

In its response, ACICS affirmed that its Review Panel has not had occasion to process an appeal since its powers went into effect on July 1, 2010. However, the other issues raised in the draft staff analysis continues to need further discussion. That is, the agency still needs to clarify the distinctions it makes between a re-hearing and an appeal, and to demonstrate how it ensures that adverse actions are ultimately made final in a timely way.

It appears to Department staff that the agency may not have fully considered all the implications of maintaining its current re-hearing process unchanged, while introducing the new appeals process on an essentially parallel path. The agency currently has no experience in using the new process for conducting appeals with an ACICS Review Board panel. In the interim, it appears that the language used by the agency to inform its constituents about their options is less than clear. At a minimum, the agency's materials on these matters are unclear to Department staff. Therefore, those materials can potentially be unclear to school personnel who will have to make crucial decisions about their options when their school receives an adverse decision from ACICS. Perhaps a "Memorandum to the Field" from ACICS to stimulate discussion and to receive comments on the appeal/re-hearing options may be warranted before the agency needs to process a complicated re-hearing and/or appeal. Furthermore, it appears that the agency has confused the timelines necessary for reaching an initial adverse decision with the need for a timely processing of an appeal following a re-hearing. The question is still open since the agency did not clarify if a school can use both processes in succession. In any event, until significant clarifications regarding these matters are forthcoming, a finding of compliance

cannot be made.

**Staff Determination:**

The agency does not meet the requirements of this section of the criteria. The agency needs to clarify the cited matters, including the distinctions it makes between a re-hearing and an appeal, and to demonstrate how it ensures that adverse actions are ultimately made final in a timely way.

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**§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**

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The agency's written policies cover the notification requirements of this section. However, the agency has not provided evidence of its effective application of this requirement.

Staff determination: The agency does not meet the requirements of this section. It needs to demonstrate its effective application of the requirement that the agency provides the Department with a brief statement summarizing the reasons for the agency's adverse 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.

**Analyst Remarks to Response:**

The draft staff analysis found that ACICS needed to demonstrate its effective application of the requirement that the agency provides the Department with a brief statement summarizing the reasons for the agency's adverse decision and the official comments that the affected institution may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment.

In response, ACICS revised its written policies to more clearly delineate the processes and timeframes used to provide the specified brief statement to the

Department. In addition, the agency revised its sample template to more clearly provide the affected institution an opportunity to add its comments to the official record, although the agency attests that no institutions have chosen to add their official comments.

However, the agency still has not provided any actual examples of the brief statement that it provides to the Department, the appropriate State agency and the public. Those actual examples are necessary to demonstrate the agency's effective application of its written policies and procedures. Until those actual examples are provided, a finding of compliance cannot be made.

Staff Determination:

The agency does not meet the requirements of this section of the criteria. The agency needs to submit actual examples of the required brief statements it provides summarizing the reasons for an adverse decision together with any official comments the affected institution may make.

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

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