

<b>Name:</b> New York State Board Of Regents	<b>Meeting Date:</b> 02/07/2018	<b>Response Submit Date:</b> 11/08/2017	<b>Status:</b> Final Review	<b>Type:</b> Renewal Petition
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## U.S. Department of Education

Staff Report

to the

Senior Department Official

on

Recognition Compliance Issues

## Recommendation Page

1. **Agency:** New York State Board Of Regents
2. **Action Item:** Renewal Petition
3. **Current Scope of Recognition:** The accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs including accreditation of programs offered via distance education within these institutions.
4. **Requested Scope of Recognition:** Same as above.
5. **Date of Advisory Committee Meeting:** February 07, 2018
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 30 days after the 12 month period that demonstrates the agency's compliance with the issues identified below.
7. **Issues or Problems:** It does not appear that the agency meets the following sections of the Secretary's Criteria for Recognition. These issues are summarized below and discussed in detail under the Summary of Findings section. -- The agency must amend its standards to be explicit in its use of administrative extension, and ensure that the enforcement timelines required by this criterion are not exceeded. [§602.20(a)] -- The agency must provide a documentation demonstrating that it has executed its extension for good cause policy. If the agency has not done this, it must explain that this has not occurred. [§602.20(b)]

## Executive Summary

### **Part I: General Information About The Agency**

The New York State Board of Regents (NYBR) has been engaged in the evaluation of quality in higher education since 1787. It is the State approval agency that authorizes the establishment of all educational institutions in the State. That function also includes the responsibility to register all of the postsecondary programs offered in New York institutions offering degrees and certificates. As the only State agency recognized by the Secretary for its institutional accrediting activities, the agency restructured its institutional accrediting activities in 2002 to clarify its role and responsibilities as an institutional accrediting agency. The institutional accreditation activities now fall under the auspices of both the NYBR and the Commissioner of Education (Board of Regents). The Board of Regents accredits degree-granting institutions that have designated it as their sole or primary accrediting agency for the purpose of establishing eligibility to participate in the Title IV, HEA programs. In this capacity, the Board of Regents currently accredits 14 institutions, all of which are located in the State of New York.

The New York State Education Department (SED), the administrative arm of the NYBRE, carries out the accreditation activities of the Board of Regents. The SED performs its duties and responsibilities under the direction of the Commissioner of Education. Within the SED, the Deputy Commissioner for Higher Education develops and implements the institutional accrediting activities.

#### **Recognition History**

The New York Board of Regents appeared on the initial list of recognized accrediting agencies in 1952, and has received continuous recognition since that time. In 2008, the agency notified the Secretary of the expansion of its scope to include distance education.

The National Advisory Committee on Institutional Quality and Integrity (NACIQI) last reviewed the agency's petition for renewal of recognition at the Fall 2012 meeting. The agency was requested to submit a compliance report in 2014. The subject of this report is in regards to the agency's petition for re-recognition. There have been no complaints submitted during this recognition period.

## **Part II: Summary Of Findings**

### **602.15(a)(1) Staffing/Financial Resources**

**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--**

**(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;**

The agency states in its narrative that "under the direction of the Board of Regents and Commissioner of Education, the State Education Department (SED) carries out the Regents accreditation activities", and accreditation policy and oversight are the responsibility of the Deputy Commissioner for Higher Education. Accreditation activities are carried out by the Office of College and University Evaluation (OCUE), which has (6) staff members who serve as the principal liaisons with the Regents Advisory Council on Institutional Accreditation (RAC). The agency has provided copies of the SED organizational chart, however, the agency did not provide any information or documentation that demonstrates the qualifications and training of the OCUE staff members to serve in their assigned roles.

The Department has not received any complaints regarding the agency's inability to conduct its accreditation activities which would indicate that staffing levels are adequate to allow the agency to conduct all accreditation activities. The agency has included a process chart that demonstrates the course of action for an institutional accreditation review conducted by the agency.

The agency has explained in its narrative about the state budgetary processes. It has indicated an increase in funding for the current year and into the next fiscal year. The agency has included documentation that breaks down its operational expenses.

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

In response to the draft analysis, the agency has indicated that it provided documentation regarding the qualifications of the OCUE staff in exhibit A5. This documentation was included in section 34 CFR 602.15(a)(2). In addition, the agency has further explained how it ensures that all staff members are trained for their roles with the appropriate level of qualifications and experience.

The addition of this information resolves the concerns mentioned in the draft petition.

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### **602.15(a)(2) Competency of Representatives**

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

State Education Department (SED) Accreditation Staff:

The agency has included resumes and job descriptions that demonstrate the qualifications of the staff members who support accreditation work are qualified for the roles in which they serve. The staffs are trained for their roles and rely on additional support from those who are veteran staff members in their office. While the agency discusses its administrative staff in its narrative for this criterion, training and qualifications for the administrative staff is covered under 602.15 (a)(1).

Peer Reviewers:

The agency has provided a copy of its peer reviewers (exhibit 7) that lists the names and affiliations of those who conduct their site visits. In addition, the agency conducts training both initial and recurrent for its reviewers that allows them to become familiar and maintain familiarity with the agency's standards, policies, and processes.

Regents Advisory Council:

The agency has provided links to its website which contains information (background, credentials, and experience: for each of the

RAC members. However, it is critical that this information be uploaded to be included in the official record of documentary evidence used by the agency to demonstrate compliance with this criterion.

Board of Regents:

The agency has provided links to the Board of Regents members on their website. However, it is critical that this information be uploaded to be included in the official record of documentary evidence used by the agency to demonstrate compliance with this criterion.

Appeals Board:

The agency has standards for the convening of the appeals board. The agency also explains that they trained appeals panel members in 2014 and provided a link to the training on their website. Additionally, the agency has provided documentation to demonstrate training for the appeals board in exhibit 4. The agency has indicated that it has not needed to convene an appeals board during this review period.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency has uploaded documentary evidence for the official record consisting of commissioner's background information, Board of Regents profiles, profiles of the Regents Advisory Council, and Appeals Board member information. The inclusion of these materials in the petition support the public record and demonstrate that the agency has the appropriate composition of membership required by this section of the Criteria. This information along with what was submitted in the draft staff analysis regarding agency training resolves the concerns mentioned in the draft staff analysis.

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**602.15(a)(3) Academic/Administrator Representatives**

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

Board of Regents:

Section 3.12 of the Regents Rules establish that seven of nine of its members be educators who practice in New York. Specifically, the bylaws require that two of those members have had experience as faculty members. The agency has provided information on its website which lists the current members of the Board of Regents and their qualifications; however, it is critical that this information be uploaded to be included in the official record of documentary evidence used by the agency to demonstrate compliance with this criterion.

Appeals Board:

The Appeals Board must also include academic and administrator representation. The agency has provided information on its website which lists the current members of the Appeals Board and their qualifications; however, it is critical that this information be uploaded to be included in the official record of documentary evidence used by the agency to demonstrate compliance with this criterion.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency has uploaded documentary evidence for the official record consisting of commissioner background information, Board of Regents profiles, profiles of the Regents Advisory Council, and Appeals Board member information. The inclusion of these materials in the petition support the public record and demonstrate that the agency has the appropriate composition of membership required by this section of the Criteria, that includes academic and administrator representation. This information along with what was submitted in the draft staff analysis regarding agency training resolves the concerns mentioned in the draft staff analysis.

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**602.15(a)(5) Public Representatives**

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

The agency states in its narrative that members of the Board of Regents and the Commissioner of Education are all public members. The agency also discusses in its narrative and included documentation from the Regents rules and its Handbook that the agency's definition of public member that matches the federal definition. The agency has explained that all members serving on its decision making bodies meet the definition of public member including the Appeals Board. Although the RAC is not an official decision-making

body the agency states that each of its members are also public members. In addition, the agency's decision making bodies meets the Department's requirement for having at least one public member for each seven members on a decision making body. However, Department staff is not clear on how the agency selects its public members and the vetting process that occurs before a member is selected.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency has provided additional details about how the agency selects its public members and the vetting process that occurs before a member is selected. The process has been explained and documented for the RAC, the Board of Regents members, and in the agency's Appeals Board membership. This information along with what was submitted in the draft regarding agency training resolves the concerns mentioned in the draft staff analysis.

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**602.15(a)(6) Conflict of Interest**

**(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's--**

- (i) Board members;**
- (ii) Commissioners;**
- (iii) Evaluation team members;**
- (iv) Consultants;**
- (v) Administrative staff; and**
- (vi) Other agency representatives; and**

The agency has standards for controlling against conflict of interest, specifically included in the agency's Handbook. The conflict of interest policy requires peer reviewers to attest that they do not have a conflict of interest. The agency has provided documentation examples of this attestation.

In addition to the peer reviewers, the RAC, the Accreditation staff, and the Board of Regents have policies for conflict of interest situations. However, there are not signed statements from these members included as documentation. The agency has provided documentation of recusals when the situation arises. The agency has not needed to convene an Appeals Board, but has standards for preventing conflict of interest with this group.

It is clear the agency has standards and practices in place for prevention of conflict of interest; however, as noted previously, the agency has not provided signed conflict of interest policy statements/documentation from all members of the Board of Regents, Accreditation staff, the RAC and a representative sample of peer reviewers which would indicate that these individuals have read and understand the agency's conflict of interest policy.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency has provided signed conflict of interest policy statements/documentation from all members of the Board of Regents, Accreditation staff, the RAC and a representative sample of peer reviewers. It is specifically noted that the staff members sign this documentation as part of the oath for affirmation of their jobs.

The inclusion of this documentation addresses the concerns raised in the draft staff analysis.

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**602.16(a)(1)(i) Student Achievement**

**(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.**

Section 4-1 of Regents rules require that those institutions accredited by the agency have clear mission statements and goals. When assessing each institution, the agency establishes student outcomes that are appropriate for the type of institution. Student outcomes measures always include graduation rates and job placement rates. The agency will also review retention rates, state licensing exam rates, and financial stability of the institution. The specific outcomes measures are established based on the cohort of similar institutions. The mean graduation rates and job placement rates of these institutions are compared to similar institutions across the state.

While it appears that the agency has been consistent in its use of the mean for calculating and determining the numerical outcomes measures, it remains unclear to Department staff the rationale for this methodology. In addition, it is unclear at what point/timeframe during the year does the calculation of the mean score occur and if the institutions are made aware of what the student outcomes measure is since it is evident the requirements/ measures change based on the agency's method for establishing its outcomes measures.

The agency collects annual information for self-reported student achievement data and has included documentation of this collection. Additionally, the agency collects this information during the initial and renewal of accreditation. The agency has provided examples site visit team reports demonstrating the team's review of student achievement.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency has provided additional details regarding its regulations/standards for student achievement and more information about the selection of those standards. The agency has also explained its on-going communication with its institutions to explain the appropriate rates and to ensure that an institution is complainant. The inclusion of this additional information resolves the concerns raised in the draft staff analysis.

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**602.16(a)(1)(ix) Student Complaints**

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

The Board of Regents prescribes requirements for the handling of student complaints. Specifically, Section 4.1 outlines details that the institution receives, investigates, and resolves student complaints related to the agency's standards for accreditation. The agency has provided multiple examples of documentation demonstrating how the agency conducts a review for compliance with this section of the Criteria.

However, it remains unclear how the agency investigates complaints that are brought to the agency's attention. While it appears that a robust process exists for the processing of complaints at the institution, Department staff is unclear about the process that is followed for complaints that are filed against the agency.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency explains how it investigates complaints that are brought to the agency's attention. Dependent on the nature of the complaint, it may be reviewed by someone outside of the accreditation staff, by the State Education Department's Office of Counsel, or may be forwarded to the U.S. Department of Education. The agency had previously explained that it had not received any complaints during this recognition period.

The inclusion of this information resolves the concerns raised in the draft staff analysis.

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**602.16(a)(1)(x) Title IV Responsibilities**

**(a)(1)(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and**

Section 4-1 of Regents rules require that those institutions accredited by the agency have robust Title IV practices that are sufficient and appropriate for supporting the institution in achieving its goals. This includes meeting all federal regulations and a review to ensure compliance is being met .

The agency collects annual information for self-reported federal student aid data and has included documentation of this collection. Additionally, the agency collects this information during the initial and renewal of accreditation. The agency has provided one example of a site visit team report about its review of title iv programs (and one that was not a Title IV recipient). However, under the focused review of the agency it is required to include multiple examples of site visit reports.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency has provided site visit team reports that document the teams review of Title IV programs for compliance with Federal requirements. In the documentation provided, Department staff was able to verify that the team conducted a review of this information as part of the standard review of the agency during its site visit.

The site visit reports demonstrates the agency's review of institutional Title IV responsibilities and resolves the issues raised in the draft staff analysis.

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**602.20(a) Enforcement Timelines**

**(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.**

Subpart 4-1 of the Regents Rules informs accredited institutions of the maximum time allowed to come into compliance with its standards which are in accordance with this criterion. The agency provided an example of probation action (page 1) and a letter for denial (page 106). It appears though that the timeframes provided prior to the final denial letter include an administrative extension given by the agency until the convening of the next Board of Regents meeting. This meeting was held 4 months beyond the two year time period that was allowed to demonstrate compliance.

While the agency has a policy for an extension for good cause under Section 2, the policy is not specific to define administrative extension. For considerations of agency limitations such as state budgets which could affect the occurrence of meeting times, it would be probable that this meeting was the first available opportunity for the agency to convene to discuss this institution. However, the good cause extension definition as it currently exists in the agency's standards do not explain or define administrative extension. The agency must amend its standards to be explicit in its use of administrative extension, and ensure that the enforcement timelines required by this criterion are not exceeded.

**Analyst Remarks to Response:**

Subpart 4-1 of the Regents Rules informs accredited institutions of the maximum time allowed to come into compliance with its standards which are in accordance with this criterion. The agency provided an example of probation action (page 1) and a letter for denial (page 106). The agency also provided documentation of an example of its administrative extension (page 27). While the Regent Rules include a policy for extension of good cause, the agency chose to use administrative extension in the example provided (exhibit 17, December 16, 2015 letter). While the agency states in their narrative, that the use of administrative extension does not allow an institution additional time to demonstrate compliance, a review of the documentation provided by the agency does

appear to indicate that its application of an administrative extension was used to extend the enforcement timelines required by this criterion. The agency must amend its administrative extension policy to make clear that it cannot be applied in a manner that would extend the enforcement timelines required by this criterion and that would not be provided to allow an institution additional time to demonstrate compliance. The agency must understand that an institution cannot remain in a noncompliant status (as determined by the agency's decision making body) longer than what is allowed by this criterion (unless the agency places the institution on an extension for good cause).

An administrative extension would not be counter to the requirements of 602.20 (a) to accommodate the logistics of establishing Regents meeting for renewals of accreditation. However, the agency's use of administrative extensions cannot be used to extend the 12 month, 18 month, or 2-year (depending on the length of the longest program offer at the institution in question) enforcement time lines required by this criterion. Once these enforcement timelines have been expired the agency must take an adverse action or allow the institution and extension for good cause (in accordance with 602.20(b)).

Additionally, while the agency has a policy for an extension for good cause under Section 4-1.3(d)(2), that policy is different and not specific to define administrative extension. The agency explains that its administrative extension is found in section 4-1.3(b). However, the good cause extension definition as it currently exists in the agency's standards does not explain in detail about reasons on why this may occur or define administrative extension.

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### **602.20(b) Enforcement Action**

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

Subpart 4-1 of the Regents Rules informs accredited institutions of the maximum time allowed to come into compliance with its standards which are in accordance with this criterion. The agency provided an example of probation action, an administrative extension for collection of additional information, and a letter for denial (page 106). The administrative extension afforded this agency does not appear to be consistent with Section 2 of the agency's policies for awarding and extension for good cause.

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

In response to the draft analysis, the agency has provided an example that was based on an administrative extension, not an extension for good cause. The agency must provide a documentation demonstrating that it has executed its extension for good cause standard. If the agency has not done this, it must explain that this has not occurred.

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## **Part III: Third Party Comments**

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