United States Senate
WASHINGTON, DC 20510

May 24, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

We write to express our deep concern about, and to seek clarity regarding, your April 3, 2018 order restoring the Accrediting Council for Independent Colleges and Schools' (ACICS) status as a federally-recognized accreditor and your forthcoming review of ACICS's 2016 petition for recognition.

ACICS has a history of transgressions, noncompliance with federal law, failure to assure a quality education for hundreds of thousands of students, and leniency in accrediting institutions that faced federal and state investigations and penalties.[1] Most notably, ACICS continued to accredit both Corinthian Colleges and ITT Technical Institute until their respective closures despite these institutions being investigated or sued by more than 20 state attorneys general, the Consumer Financial Protection Bureau, the U.S. Securities and Exchange Commission, the Department of Justice, and the Department of Education for misrepresenting job placement rates and attendance records, suspect recruitment practices, and deceptive advertising between 2011 and 2014.[2] Therefore, we are deeply concerned that your April 3rd decision to restore ACICS's status as a federally-recognized accreditor as you conduct a further review will put students and taxpayers directly in harm's way.

In December 2016, then-Education Secretary John King, on the recommendation of a federal accreditation advisory panel, terminated ACICS's federal recognition.[3] But in March 2018, federal District Court Judge Reggie B. Walton, in response to an appeal filed by ACICS, ruled that then-Secretary King's 2016 determination did not consider ACICS's additional submissions

[1] "Rubber stamps: ACICS and the troubled oversight of college accreditors," Office of Senator Elizabeth Warren, June 10, 2016, https://www.warren.senate.gov/files/documents/2016-6-10_ACICS_Report.pdf.
[2] "Government investigations and lawsuits involving for-profit schools (2004-May 2014)." *National Consumer Law Center* (2014). Online at: https://www.nclc.org/images/pdf/pr-reports/for-profit-gov-investigations.pdf.
[3] U.S. Department of Education, Secretary King's decision to cease recognition of ACICS, December 12, 2016, https://www2.ed.gov/documents/acics/final-acics-decision.pdf.

of evidence, and ordered the decision remanded back to you to consider this additional evidence.[4]

In response, on April 3, 2018, you issued an order that restored ACICS's status as a federally-recognized accrediting agency effective as of December 12, 2016, removed ACICS as an agenda item of the May 2018 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI), and discussed your plans to conduct a "further review" of ACICS's January 2016 petition for continued recognition.[5] We, therefore, seek a better understanding of your April 3, 2018 ACICS order, which could impact the lives of countless students.

While the court remanded the ACICS determination to you in order to incorporate materials submitted by ACICS in May 2016 (the "Part II submission"), the court made no suggestion that ACICS should be reinstated. Nonetheless, your order immediately reinstates ACICS as a federally-recognized accrediting agency while the Department evaluates the Part II submission.

By law, an accreditor's recognition may be revoked based upon the recommendation of NACIQI to the Department, with the determination made by the Department's Senior Department Official. NACIQI's decision is informed by a report completed by the Department's staff, which may include a recommendation for NACIQI to consider. Because ACICS appealed the Senior Department Official's decision, then-Secretary King made the final determination in response to ACICS's appeal.

In the case of ACICS, at every point of official consideration—the Department's 2016 staff analysis and report, NACIQI's June 2016 decision, and the Senior Department Official's September 2016 decision—the recommendation or decision was to terminate ACICS's recognition as a federally-recognized accrediting agency.[6] These consistent determinations collectively made up the Department's 2016 ACICS decision.

By performing an about face, rather than addressing the supplementary material required by the court's decision, the Department appears to be using the decision as a pretext to ignore the significant and damning record developed through the process. That extensive process that carefully detailed ACICS's profound failures as a federally recognized accreditor include the Department's 2016 staff recommendation and NACIQI's own June 2016 ACICS recommendation, in which the panel voted 10-3 in favor of "deny[ing] [ACICS's] petition for renewal of recognition, and withdraw[ing] the agency's recognition."[7] Given NACIQI's charge to "advise the Secretary with respect to establishment and enforcement of the standards of

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[4] United States District Court for the District of Columbia, Civil Action No. 16-2448, Accrediting Council for Independent Colleges and Schools v. Betsy DeVos and the United States Department of Education. https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2016cv2448-76.

[5] U.S. Department of Education, Docket No. 16-44-O, Accrediting Agency Recognition Proceeding, Secretary Betsy DeVos, April 3, 2018, https://www2.ed.gov/documents/press-releases/acics-docketno-16-44-0.pdf.

[6] U.S. Department of Education, Accreditation and State Liaison, Staff report to the Senior Department Official on Recognition Compliance Issues, June 2016, https://opeweb.ed.gov/aslweb/finalStaffReports.cfm?aID=15&mid=68.

[7] U.S. Department of Education, "Report of the meeting: National Advisory Committee on Institutional Quality and Integrity," Susan D. Phillips, June 2016, https://sites.ed.gov/naciqi/files/2016/09/NACIQI-Report-of-the-MeetingJUNE2016FINAL-508.pdf.

accrediting agencies," we reiterate our deep concern that your order ignores the panel's recommendations and once again puts students and taxpayers at risk.

In order to better understand the rationale behind - and consequences of - your order, we have several questions that were unaddressed in your April 3, 2018 order:

1. What process will the Department engage in to evaluate the Department's December 12, 2016 decision? Will you or a designated Department official make the decision? Will NACIQI and the Department's Accreditation Group contribute a new analysis and decision, or will their previous recommendation be considered in this determination?

2. How will the Department consider the March 2018 report by Department staff in its evaluation of ACICS? Please provide a copy of this report to our offices.

3. What is the expected timeline for you to render your decision on ACICS's appeal to Secretary King's 2016 decision and status as a federally-recognized accreditation agency?

4. A key area under consideration in Secretary King's December 2016 decision was whether ACICS could come into compliance within 12 months. Given that over 16 months have now passed, what time span will the Department consider and evaluate when determining whether ACICS was in compliance or can come into compliance? Will the Department's new decision consider whether the agency was compliant by December 12, 2017, which is one year from the date of Secretary King's decision, or some other date?

5. If it is determined that ACICS does not warrant full recognition as an accrediting agency, your order notes it will consider whether "ACICS should be allowed continued recognition for a period not to exceed 12 months to demonstrate compliance with any criteria for which I find ACICS is not in compliance, as allowed by 34 C.F.R. §§ 602.36(e)(3) and 602.37(d)."[8] Would this 12 month period begin following your decision, or be retroactive to an earlier date?

6. Will the Department consider evidence submitted by ACICS following the June 2016 NACIQI meeting and decision? If so, please provide a summary of what that evidence is and when it was submitted.

7. Will the Department provide new opportunities for public comment or consider the public comments already submitted for the May 2018 NACIQI meeting? If a new opportunity for public comment is planned, when can we expect such a request?

8. What does your decision mean for the June 12, 2018 deadline for ACICS schools to find a new federally-recognized accreditor in order to maintain access to Title IV funding? What new requirements will the Department include in the program participation agreements for institutions that had or have ACICS-accreditation?

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[8] U.S. Department of Education, Docket No. 16-44-O, Accrediting Agency Recognition Proceeding, Secretary Betsy DeVos, April 3, 2018.

9. There are currently 18 colleges that are no longer accredited by ACICS. They either voluntarily withdrew their accreditation or had their accreditation revoked or expired. Therefore, despite the Secretary's restoration of ACICS as a federally-recognized accrediting agency, these 18 colleges are still without accreditation and should not receive access to Title IV aid. Can you confirm the Title IV eligibility status for those 18 colleges?[9]

We ask that you provide a response to these questions by June 7th, 2018. If you have any questions, please contact Josh Delaney in Senator Elizabeth Warren's office at (202) 224-4543. Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Richard Blumenthal
United States Senator

Sherrod Brown
United States Senator

Patty Murray
United States Senator

Richard J. Durbin
United States Senator

Margaret Wood Hassan
United States Senator

[9] Ambria College of Nursing (IL), Camelot College (LA), Colegio Technologico y Comercial de Puerto Rico (PR), Detroit Business Institute – Downriver (MI), Dewey University (PR), Global Health College (VA), Key College (FL), MDT College of Health Sciences (OH), Northwest Suburban College (IL), Pacific Institute of Technology (GA), Pacific States University (CA), Pioneer Pacific College (OR), PPG Technical College (PR), SAE Institute of Technology – New York (NY), Seattle Film Institute (WA), South Coast College (CA), Southern California Health Institute (CA), and The Recording Conservatory of Austin (TX).